

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 821

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

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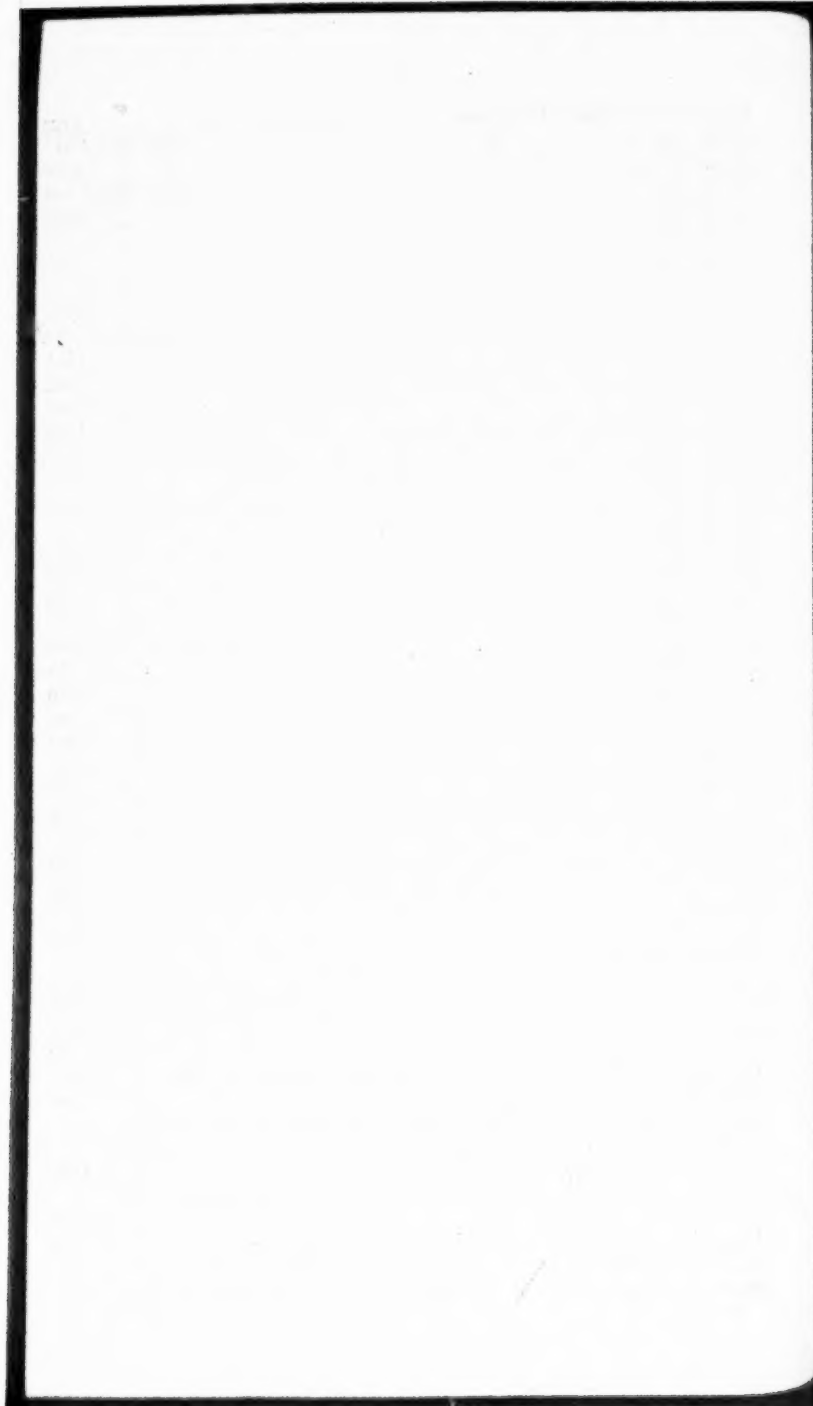
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1 United States District Court, Western District of
New York

Civil Action No. 9004

UNITED STATES OF AMERICA, PLAINTIFF

v.

GREATER BUFFALO PRESS, INCORPORATED, ET AL., DEFENDANTS
RELEVANT DOCKET ENTRIES

Date

1961

Jan. 6----- Filed complaint.
Feb. 28----- Filed answer of Hearst Corp.
Mar. 1----- Filed answer of Greater Buffalo Press et al.
2----- Filed answer of Newspaper Enterprise Association.
July 7----- Filed stipulation and order continuing preliminary injunction, entered order—Henderson, J (notice to Mr. Moore).
F-3
Oct. 25-26---- Hearing on motion for temporary, injunction—Decision reserved.

1962

June 25----- Filed findings of fact and conclusions of law.
25----- Filed and entered order for temporary injunction—Henderson, J. F-10 (notice to Mr. Curtin, Mr. Miller, Mr. Moore, Mr. Hitchcock).

1963

Feb. 19----- Filed findings of fact and conclusions of law and order modifying order of June 22/62, entered order—Henderson, J. F-2 (notice to Mr. Miller, Mr. Moore, Mr. Hitchcock).
F-17
Mar. 7----- Filed motion of plaintiff to stay order of Feb. 19/63—ret.
Mar. 11—Denied.
Apr. 5----- Filed stipulation and order amending order of Feb. 10/63—Henderson, J. (notice and copy to Mr. Moore). F-19

1964

Dec. 28----- Filed Order that the defendant, Greater Buffalo Press Incorp., be permitted to transfer to its Dunkirk Plant the newspaper runs presently printed by defendant, Dixie Color Printing Corp., etc.—Henderson, J. (notice and copy to Mr. Curtin). F-39

1965

- 2 June 14 Pretrial conference before Judge Henderson.
 16----- Filed stipulation re Judgment.
 July 21----- Filed stipulation re Judgment entered into on July 16, 1965.
 28----- Pretrial conference (JOH).
 Aug. 16----- Submission of amended order.
 31----- Filed stipulation re Final judgment.
 31----- Filed final judgment restraining Hearst—Henderson, J. (notice to Messrs. Curtin and Miller). F-47
 Oct. 12----- Trial before Judge Henderson.
 13----- Trial continued.
 14----- Trial continued, decision reserved.

1966

- Jan. 17----- Hearing re receipt of certain documents into evidence.
 Dec. 16----- Filed order that the color comic supplement for The Independent may hereafter be printed at the Lufkin, Texas plant, operated by Southwest Color Printing Corp., etc.—Henderson, J. (notice and copy to Messrs. Curtin and Moore). F-63

1967

- June 27----- Trial continued from 1/19/66.
 28----- Trial continued.
 29----- Trial continued.
 30----- Trial continued.
 July 12----- Trial continued.
 13----- Trial continued, Mr. Moore renews motions made at end of Government's case—decision reserved.
 14----- Trial continued. Defendants renew motions—decision reserved. Mr. Moore moves to vacate injunction—injunction—decision reserved. Mr. Stephens moves to dismiss—decision reserved.

3

1967

- July 28----- Filed order on consent permitting the removal of the printing of color comic supplements for the Farmington, New Mexico Times from the Wilkes Barre plant to the Lufkin, Texas plant—Henderson, J. (notice to Mr. Curtin and Mr. Moore). F-70

1969

- Dec. 17----- Final Arguments—dec. res.

1970

- May 26----- Filed findings of fact and conclusions of law that the defts, Greater Buffalo Press, Inc., International Color Printing Southwest Color Printing Corp., Dixie Color Printing Corp., and Newspaper Enterprise Association, Inc. are entitled to judgment dismissing the complaint—Henderson, J. (notice to Messrs. Schroeder, Moore and Stevens). F-104
- May 28----- Filed Judgment on Decision by the Court-Clerk (notice and copy to Messrs. Schroeder; Raichle, Banning, etc. and Baker, Hostetler, etc.). F-104
- July 24----- Filed plaintiff's notice of appeal to the Supreme Court with certificate of service on Mr. Raichle and Messrs. Stevens and Karch of Baker, Hostetler, and Patterson.

1971

- Jan. 18----- Filed certified copy of order of U.S. Supreme Court noting probable jurisdiction.

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, in order to prevent and restrain violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

2. The defendants transact business within the Western District of New York and are found therein.

5

II

THE DEFENDANTS

3. Greater Buffalo Press, Incorporated (hereinafter referred to as Greater Buffalo), a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York, is hereby made a defendant herein. Greater Buffalo engages in the printing of color comic supplements; it is the largest printer of color comic supplements in the United States. It maintains a printing plant at Buffalo, New York and maintains, through its subsidiaries,

The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, plants at Wilkes-Barre, Pennsylvania, Lufkin, Texas and Sylacauga, Alabama, respectively. It also utilizes the printing facilities of the Great Lakes Color Printing Corporation of Dunkirk, New York. Greater Buffalo's business includes the sale of its color comic supplement printing services to newspapers and to comic feature syndicates. Greater Buffalo is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

4. The Hearst Corporation (hereinafter referred to as Hearst), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York, is made a defendant herein. Hearst, through its unincorporated division, King Features Syndicate (hereinafter referred to as King), is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers. King maintains a sales force, members of which regularly visit the offices of newspapers throughout

the United States. King also engages in the business of
6 selling color comic supplement printing services, not only for the printing of its own copyrighted features, but for the features of competing comic feature syndicates as well. King contracts to provide color comic supplement printing services with or without the copyrighted features which it licenses. It does not engage in any printing but contracts with a printer to fulfill its commitments for color comic supplement printing. Hearst is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

5. Newspaper Enterprise Association, Inc. (hereinafter referred to as NEA), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio, is hereby made a defendant herein. NEA, the voting stock of which is owned by E. W. Scripps Company, Inc., Cincinnati, Ohio, is engaged in the business of licensing copyrighted newspaper features including color comic features, to newspapers. NEA is one of the largest such syndicates in the United States and maintains a sales force, members of which regularly visit the officers of newspapers throughout the United States. NEA also engages in the business of selling color comic supplement printing services, not only for the

printing of its own copyrighted features, but for the features of competing comic feature syndicates as well. NEA also contracts to provide color comic supplement printing services with or without the copyrighted features which it licenses. It does not engage in any printing but contracts with a printer to fulfill its commitments for color comic supplement printing. NEA is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

6. The International Color Printing Company, also known as International Color Printing Co. Inc. (hereinafter referred to as International), a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Wilkes-Barre, Pennsylvania, is hereby made a defendant herein. International engages in the printing of color comic supplements and operates two color printing plants in Wilkes-Barre, Pennsylvania. Since 1954, or prior thereto, International, pursuant to written contracts entered into with King, is, and has been, obligated to print color comic supplements exclusively for King. In or about June 1955, International's out-standing stock was purchased by the defendant, Greater Buffalo. International is charged with the violation, hereinafter alleged, of Section 7 of the Clayton Act.

7. Southwest Color Printing Corporation, a corporation organized and existing under the laws of the State of Texas, with its principal place of business in Lufkin, Texas, is hereby made a defendant herein, for purposes of relief.

8. Dixie Color Printing Corporation, a corporation organized and existing under the laws of the State of Alabama, with its principal place of business at Sylacauga, Alabama, is hereby made a defendant herein, for purposes of relief.

9. Whenever in this complaint reference is made to any act, deed or transaction on the part of the defendants, such allegation shall be deemed to mean that the officers, directors, agents or employees of said defendant authorized, ordered or did such act, deed or transaction for, or on behalf of, such defendant while actively engaged in the management, direction and control of its affairs. Whenever reference is made to any act, deed or transaction on the part of King, such allegation shall be deemed to mean that the officers, directors, agents or employees of the defendant Hearst authorized, ordered or did such act, deed or transaction while actively engaged in the management, direction and control of Hearst's affairs.

III

THE CO-CONSPIRATOR

10. Eastern Color Printing Company (hereinafter called Eastern), Waterbury, Connecticut, is hereby named as co-conspirator. Eastern engages in the business of printing, among other things, color comic supplements for sale to newspapers. It maintains its printing facilities in or near, and main offices at Waterbury, Connecticut.

11. Whenever in this complaint reference is made to any act on the part of a co-conspirator, such allegation shall be deemed to mean that the officers, directors, agents or employees of the named co-conspirator, authorized, ordered or did such act, deed or transaction for, or on behalf of, such co-conspirator while actively engaged in the management, direction and control of its affairs.

IV

DEFINITION

12. The term "color comic supplements", as used herein, means supplements to Sunday or Saturday newspapers, printed in color, and containing, among other things, copyrighted comic features.

V.

TRADE AND COMMERCE INVOLVED

13. Virtually every newspaper in the United States which publishes a Sunday edition distributes a color comic supplement with each copy of such edition. Color comic supplements range in size from four to twenty-four pages and consist of copyrighted features printed in color. The copyrighted features include, but are not limited to, comic strips, romance and adventure stories, cartoons, games and puzzles.

9 14. The rights to publish the copyrighted comic features which appear in color comic supplements are generally licensed to newspapers by persons or companies called "syndicates". Defendant Hearst, through its King division, and defendant NEA, as well as other syndicates, license the publication of comic features to newspapers, usually by written contract. Along with such rights the syndicates furnish the "matrices", or moulded designs, of such comic features. The

syndicates ship the matrices, for printing, to defendants Greater Buffalo or International, to co-conspirator Eastern, to other color comic supplement printers, or direct to newspapers which are equipped to print their own color comic supplements.

15. Approximately eighty-six percent (86%) of the total number of newspapers in the United States which distribute color comic supplements with their Sunday or Saturday editions do not print such supplements themselves. The color comic supplements distributed by such newspapers are printed by the defendants, Greater Buffalo and International, the co-conspirator Eastern, or by other printers of color comic supplements. Such printers generally provide the newsprint for the color comic supplements which they print, using for such printing color plates cast from the matrices received from King and NEA or from other comic feature syndicates. Some newspapers, principally large newspapers in major markets, and some newspaper chains, maintain facilities for printing color comic supplements and print their own color comic supplements.

16. The aforementioned color comic supplement printing service, including the casting of color plates from matrices, the furnishing of newsprint and the printing of the supplements, is obtained by newspapers through direct contract or arrangement with the defendant Greater Buffalo, the co-conspirator Eastern, one of the other color comic supplement printers, or by contract or arrangement with the comic features syndicates, King and NEA. King and NEA, in turn, fulfill their contracts for printing through arrangements with defendant Greater Buffalo or one of its printing subsidiaries. The latter furnish the newsprint and print the color comic supplements that King and NEA supply to their newspaper customers.

17. During the period from 1954 to the present date, purchases of color comic supplement printing services from syndicates and from color comic supplement printing companies were approximately \$28,000,000 per year. Of such annual purchases approximately \$9,000,000 were made from Greater Buffalo, \$10,000,000 from King and \$1,500,000 from NEA. Thus, during the aforementioned period, Greater Buffalo, King and NEA accounted for approximately seventy-three percent (73%) of such purchases, or on the basis of color comic supplement units sold, approximately eighty percent (80%).

18. From 1954, or prior thereto, to the present date, King has maintained contracts with International, which operates two color printing plants in Wilkes-Barre, Pennsylvania. By the terms of such contracts and subject to certain conditions, International is, and has been, obligated to print color comic supplements exclusively for King. In addition, during the aforementioned period King has entered into arrangements or contracts with Greater Buffalo whereby Greater Buffalo has furnished newsprint and printed color comic supplements for supplement printing service customers of King.

19. Defendant NEA contracts with newspapers to furnish them with color comic supplement printing services. NEA arranges or contracts with Greater Buffalo and other printing companies, which actually furnish the newsprint and the color printing for NEA's newspaper customers.

20. Defendants Greater Buffalo, Hearst, NEA and International, and the co-conspirator Eastern, fulfill their
11 contracts for color comic supplement printing through printing performed in plants in Buffalo, New York, Wilkes-Barre, Pennsylvania, Lufkin, Texas and Waterbury, Connecticut. The color comic supplements printed at these plants are shipped in interstate commerce to newspapers throughout the United States.

VI.

OFFENSES CHARGED

Violations of Section 1 of the Sherman Act

21. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of this complaint, in restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action between the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and, since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, the substantial terms of which have been and are:

(a) To refrain from soliciting color comic supplement printing business from each other's customers; and

(b) To maintain and stabilize the price of color comic supplement printing in the United States.

23. During the period of time covered by this complaint, the defendants and the co-conspirator, and others to the plaintiff unknown, for the purpose of effectuating the aforesaid combination and conspiracy, have done, among other things, the following:

12 (a) In or about January or February 1954, representatives of the defendants Greater Buffalo and King held meetings in New York City, New York, at which, among other things, they agreed that:

(1) Greater Buffalo and King would divide between themselves the business of supplying color comic supplement printing services to the Gannett newspapers published in Utica and Binghamton, New York; and

(2) Greater Buffalo would pay King fifty dollars (\$50) per week to refrain from offering to the Waterloo Courier, Waterloo, Iowa, prices below those of Greater Buffalo for color comic supplement printing, as long as Greater Buffalo would service this account.

(b) Greater Buffalo and King did those things they agreed to do, pursuant to the agreements described in subparagraph (a);

(c) In or about November 1955, representatives of King and the co-conspirator Eastern held a meeting in New York City, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern have continued this arrangement to the date of this complaint; and

(d) In or about November 1955, representatives of the defendants King, NEA and Greater Buffalo held a meeting at the Hotel Beverly in New York City, New York, at which they agreed, among other things, that King and NEA would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement services and keep knowledge of such agreement confined to their respective sales

13 organizations. Pursuant to this arrangement, NEA did the following, among other things, when requested to submit bids to newspapers or their representatives:

(1) In or about March 1957, NEA submitted a bid to the Jackson, Mississippi, State Times at an artificially high and non-competitive price;

(2) In or about January 1956, NEA refused to submit a price quotation to an agent for the General Newspaper group in Atlanta, Georgia; and

(3) In or about January 1956, NEA refused to submit a price quotation to the publisher of the Tupelo, Mississippi, Journal.

Violations of Section 2 of the Sherman Act

24. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize, and the defendant Greater Buffalo, since about June 1955, has monopolized, the above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendants Greater

14 Buffalo, Hearst and NEA, the substantial terms of which have been and are that they agreed to the terms set forth in subparagraphs (a) and (b) of paragraph 22 of this complaint, which subparagraphs are here realleged with the same force and effect as though said subparagraphs were here set forth in full.

26. In effectuation of the offenses alleged in paragraph 24 of this complaint, the defendants Greater Buffalo, Hearst and NEA, among other things, did the following:

(a) Those things which as hereinbefore alleged in paragraph 25, they combined and conspired to do;

(b) Defendant Greater Buffalo increased its share of the market for printing of color comic supplements from approximately forty-two per cent (42%) to approximately eighty per

cent (80%) by the purchase, in or about June 1955, of all the outstanding stock of International;

(c) Defendant Hearst promoted, encouraged and assisted defendant Greater Buffalo in the aforesaid purchase of International;

(d) Defendant Greater Buffalo, in or about 1956, itself or through its subsidiary, Southwest Color Printing Corporation, commenced the erection of a plant at Lufkin, Texas, for the printing of color comic supplements; and

(e) Defendant Greater Buffalo, in or about 1957, itself or through its subsidiary, Dixie Color Printing Corporation, commenced the erection of a plant at Sylacauga, Alabama, for the printing of color comic supplements.

Violation of Section 7 of the Clayton Act

27. The effect of the aforesaid acquisition by the defendant Greater Buffalo of the defendant International, as set forth in subparagraph (b) of paragraph 26 hereof, which subparagraph is here realleged with the same force and effect as though said subparagraph were here set forth in full, has been, and
15 will continue to be a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade and commerce in the United States, in violation of Section 7 of the Clayton Act, in that competition between the defendants Greater Buffalo and International has been and will continue to be eliminated.

Violations of Section 3 of the Clayton Act

28. Beginning in or about 1954, or prior thereto, and continuing to the date of the filing of this complaint, defendants Hearst and NEA severally have sold, and presently sell, comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors. The effect of said transactions and of such condition, agreement or understanding has been, and may continue to be, a substantial lessening of competition or tendency to create a monopoly in the sale of color comic supplement printing services in interstate commerce, in violation of Section 3 of the Clayton Act.

29. The violations alleged in paragraphs 21, 24, 27 and 28 of this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

30. The aforesaid offenses charged in paragraphs 21, 24, 27 and 28 of this complaint have had, among other things, the following effects:

(a) Newspapers in many parts of the United States have been denied the advantages of competitive bidding for the printing of their color comic newspaper supplements;

16 (b) Newspapers not desiring the color comic supplement printing services offered by the defendants have been compelled to pay arbitrary prices for comic features;

(c) Price competition among defendants and the coconspirator Eastern for the sale of color comic supplement printing has been eliminated;

(d) The defendant Greater Buffalo has obtained a monopoly of the printing of color comic supplements in the United States;

(e) Competition in the printing and sale of color comic supplements has been suppressed and interstate trade and commerce in color comic supplements has been unreasonably restrained; and

(f) Printers offering color comic supplement printing services to newspapers have been restrained by the acts of these defendants from selling such services to newspaper customers.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that the defendants and the co-conspirator have combined and conspired to restrain and to monopolize, and that the defendant Greater Buffalo has monopolized, the interstate trade and commerce in the printing of color comic supplements and sale of color comic supplement printing services, in violation of Sections 1 and 2 of the Sherman Act.

2. That the acquisition by the defendant Greater Buffalo of the defendant International be adjudged a violation of Section 7 of the Clayton Act.

17 3. That the aforesaid sales and contracts for sale by the defendants Hearst and NEA of comic features on the condition, agreement or understanding that the newspaper purchasers shall not deal in color comic supplement services being offered or sold by any competitor of the defendants be adjudged and decreed to be unlawful and in violation of Section 3 of the Clayton Act.

4. That the defendants, their officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from continuing, reviving, or renewing, directly or indirectly, the aforesaid combination and conspiracy and the aforesaid contracts, agreements, or understandings, and from practices having the purpose or effect of continuing, reviving or renewing any of the aforesaid offenses or any offense similar thereto.

5. That the Court adjudge and decree that the defendant Greater Buffalo has caused the erection of plants at Lufkin, Texas, and Sylacauga, Alabama, and used the same in effectuating and maintaining the combination and conspiracy to restrain and to monopolize, and the monopolization of the aforesaid interstate trade; and that the Court enter such orders, as it may deem appropriate and necessary, directing the defendant Greater Buffalo, and its officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, to divest the ownership, control and participation in operating such plants in order to dissipate the effects of the violations herein alleged, and to establish free and unfettered competition in the trade and commerce herein involved.

6. That the defendant Greater Buffalo be required to divest itself of ownership of defendant International and that the defendant International be barred from selling any of its stock or assets to the other defendants or the co-conspirator
18 named herein or to any of their officers, agents, directors or employees, or to any persons acting or claiming to act on their behalf.

7. That the defendants be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of their unlawful activities as hereinbefore alleged, and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements.

8. That the Court schedule a separate hearing on questions of relief and consider at such hearing specific plans to be proposed by plaintiff, whereunder defendants Greater Buffalo, King and NEA will be required to take such steps as are necessary to sever their relationships with one another, with defendant International, and with defendants Southwest Color Printing Corporation and Dixie Color Printing Corporation.

9. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

10. That the plaintiff recover the costs of this suit. Dated: Buffalo, New York, ———, 1961.

William P. Rogers

WILLIAM P. ROGERS

Attorney General.

Raymond M. Carlson

RAYMOND M. CARLSON

Robrt A. Bicks

ROBERT A. BICKS

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Attorneys, Department of Justice.

NEIL R. FARMELO

United States Attorney.

ANSWER

The defendants, Greater Buffalo Press, Incorporated (hereinafter called Greater Buffalo), The International Color Printing Company (hereinafter called International), Southwest Color Printing Corporation (hereinafter called Southwest) and Dixie Color Printing Corporation (hereinafter called Dixie), for their answer to the complaint herein:

1. Admit the allegations of paragraph designated "1" of the complaint which allege that this action is instituted under the Acts of Congress set forth therein and deny any knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph.

2. Greater Buffalo admits the allegations of paragraph designated "2" of the complaint, and the other defendants deny such allegations.

3. Deny the allegations of paragraph designated "3" of the complaint, except that they admit that Greater Buffalo is a New York corporation with its principal place of business and a printing plant in Buffalo, New York and that its business includes the printing and sale of color comic supplements, and except that they deny knowledge or information sufficient to form a belief as to whether Greater Buffalo is the largest printer of color comic supplements in the United States and admit that Greater Buffalo utilizes the printing facilities of its subsidiaries at Wilkes-Barre, Pennsylvania and Lufkin, Texas, and of Great Lakes Color Printing Corporation at Dunkirk, New York.

4. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "4", "5", "13" and "28" of the complaint.

5. Greater Buffalo and International admit the allegations of paragraph designated "6" of the complaint except that they deny that since 1954 or prior thereto, International, pursuant to written contracts entered into with King, is, and has been obligated to print color comic supplements exclusively for King, and refer to such contracts for the terms and conditions thereof.

6. Greater Buffalo and Southwest admit the allegations of paragraph designated "7" of the complaint, except that they deny knowledge or information sufficient to form a belief as to the purposes for which Southwest was made a defendant herein.

7. Greater Buffalo and Dixie admit the allegations of paragraph designated "8" of the complaint, except that they deny knowledge or information sufficient to form a belief as to the purposes for which Dixie was made a defendant herein.

8. Deny the allegations of paragraphs designated "9" and "11" of the complaint, except that they admit the allegations of said paragraphs which purport to define the meaning of the words and terms set forth in the complaint.

21 9. Admit the allegations of paragraph designated "10" of the complaint to the extent that they allege that Eastern Color Printing Company is named as a co-conspirator therein but deny the existence of any such conspiracy and deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

10. Admit the allegations of paragraph designated "12" of the complaint but deny that the definition set forth therein is the one commonly accepted in the trade or is all inclusive.

11. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "14" of the complaint, except that Greater Buffalo and International admit that some syndicates ship some matrices to them.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "15" of the complaint, except that Greater Buffalo and International admit that they print color comic supplements distributed by some newspapers, that they generally provide newsprint therefor, and that they use printing color plates cast from matrices received from syndicates and newspapers, and except that they deny that the newspapers which maintain facilities for printing and/or print their own color comic supplements are confined to large newspapers in major markets or newspaper chains, and state that almost all newspapers maintain facilities capable of printing color comic supplements.

13. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "16" of the complaint, except that they admit that they print some color comic supplements

for certain newspapers and for King and N.E.A.; and that they supply the newsprint therefor.

22 14. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "17" of the complaint, except that Greater Buffalo admits that from 1954 to the date of filing the complaint, annual purchases of color comic supplement printing in excess of \$9,000,000 were made from it.

15. Greater Buffalo and International deny the allegations of paragraph designated "18" of the complaint, except that they admit that from 1954 to the date of filing the complaint, King has had contracts with International, and refer to such contracts for the terms and conditions thereof, and Greater Buffalo admits that during the aforementioned period, it has printed some color comic supplements and has furnished newsprint for certain customers of King on the basis of individual orders therefor.

16. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "19" of the complaint, except that Greater Buffalo admits that it prints some color comic supplements for certain customers of N.E.A. and furnishes the newsprint therefor.

17. Admit the allegations of paragraph designated "20" of the complaint insofar as they respectively pertain to them, and deny knowledge or information sufficient to form a belief as to such allegations insofar as they pertain to Hearst, N.E.A. and Eastern.

18. Deny the allegations of paragraphs designated "21", "22", "23", "24", "25", "26", "27", "29" and "30" of the complaint.

23 19. Each answering defendant denies each and every allegation of the complaint not hereinbefore specifically admitted or denied by it, except that Dixie denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "6", "7" and "18" of the complaint; Southwest denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "6", "8", and "18" of the complaint; and International denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "7" and "8" of the complaint.

WHEREFORE, Defendants demand judgment dismissing the complaint upon the merits and awarding to the defendants the costs and disbursements of the action.

RAICHLE, MOORE, BANNING AND WEISS,

By

A Member of the Firm

Attorneys for Defendants, Greater Buffalo Press, Incorporated, The Internaitonal Color Printing Company, Southwest Color Printing Corporation, and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

REPORT OF THE
COMMISSIONER OF THE
BUREAU OF CHEMISTRY
FOR THE YEAR 1900

BY
J. H. MANNING
CHIEF OF BUREAU

CHICAGO
PUBLISHED BY THE UNIVERSITY OF CHICAGO PRESS
1901

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILL.
1901

PRINTED BY THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILL.

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILL.

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILL.

25 DEPOSITION OF JOSEPH J. GORMAN, TAKEN ON APRIL 18,
1961

JOSEPH J. GORMAN, having been first duly sworn, was
examined and testified as follows:

EXAMINATION

By Mr. FELDMAN:

Q. What is your name, please?

A. Joseph J. Gorman.

Q. Where do you reside?

A. 581 Meadowland Avenue, Kingston, Pennsylvania.

Q. What company are you affiliated with?

A. International Color Printing Company.

Q. What is the title of the position you hold with the International Color Printing Company?

A. President and General Manager.

Q. How long have you held those two positions?

A. Approximately 35 or 36 years.

Q. Have you held those two positions continuously?

A. Yes, sir.

Q. Are you familiar as president and as manager with the business operations of the International Color Printing Company?

A. Yes, sir.

Q. Are you as president familiar with the documents
26 and records presently kept by the International Color Printing Company?

A. As closely as I can keep myself in touch with them. Considering the wide variety of operations and so forth, I have a pretty fair knowledge of the entire operation.

Q. As president do you have knowledge as to the business assets and properties at the present time of the International Color Printing Company?

A. Yes, sir.

Q. As President do you have knowledge as to the machinery and equipment presently in the possession of the International Color Printing Company?

A. Yes, sir.

Q. In regard to such machinery and equipment presently in the possession of the International, was it the policy of International in the past for you as president to participate in the purchase of any or some of that equipment?

A. Yes, sir.

Q. Do you as president have knowledge as to the newspaper accounts or runs presently being printed or serviced by International?

27 A. General knowledge. We have so many papers and they vary from week to week or month to month that I couldn't possible keep in my mind the names of all of the newspapers.

Q. Is there any particular department in International which does have such knowledge?

A. The Schedule Department.

Q. Who has that department?

A. My sister, Bessie Gorman.

Q. How many employees does she have under her direction?

A. About five, five or six.

Q. To your knowledge does International employ personnel who maintain and service machinery and equipment?

A. Yes, sir.

Q. To your knowledge does International employee personnel who recondition or repair such machinery or equipment?

The WITNESS: Will you repeat that please?

Mr. FELDMAN: Will you repeat that?

(Whereupon the question was read by the reporter.)

28 A. Yes, sir.

Q. How many people does International presently have in its employ who maintain, service, recondition or repair such machinery and equipment?

A. Approximately eighteen, seventeen or eighteen.

Q. At the present time does International have printing presses in its possession or control?

A. Yes, sir.

Q. How many such presses does International have?

A. We have three single width presses in Peoria, Illinois. We have five single width presses in Wilkes-Barre, Pennsylvania at 268 George Avenue.

Q. Does that 268 George Avenue have any particular names such as a Parsons or Sheldon Plant?

A. Parsons Plant?

Q. It is called the Parsons Plant?

A. Parsons Plant.

Q. Therefore, the five single width presses that you just referred would be at the Parsons Plant, is that correct?

A. That's right, yes. Now, we have in addition to that at the Sheldon Plant—I prefer to number them. Then it will be easier for me to count them. Then you can count them

up later,—press 2055, press 2042 and 2042-a which might be considered as one machine.

Q. When you say "one machine" you mean 2042?

A. And 2042-a.

Q. Might be considered as one machine?

A. One machine. Press 2531, press 2091 and press 2392 and 2392-a, the "a" being an annex to 2392, and 2392 can be operated as a press without 2392-a. But we generally consider it as one press.

Q. Would that be the same in regard to the numbers 2042-a?

A. Yes, sir.

Q. That also can be operated as a single press. Are there any others that you can think of?

A. That is all?

Q. Would I be correct then in stating that you have six to ten presses?

Mr. MOORE: Subject to correction.

30 Mr. FELDMAN: Yes.

A. I have listed them as best I can recall them now, yes.

Q. We are talking now about the Sheldon?

A. That is the Sheldon plant that I just gave you the name. They are double width presses. I don't know whether I told you that or not. They are double width presses at Sheldon.

Q. Going back to the Parsons Plant, those are all single presses, is that correct?

A. Single presses.

Q. Going back now to June 1, 1955 do you know how many printed presses International then had in its possession altogether?

A. The same number that we have today.

Q. The number you listed a little while back, namely, the presses at the Parsons and Sheldon plants, have they been acquired by International since June 1, 1955?

A. No, sir.

Q. Have any of the presses International presently has at the Parsons or Sheldon Plant been acquired since June 1, 1955 from the Peoria Plant of International?

31 A. No, sir.

Q. In regard to the printing presses which were at the Peoria Plant of International on June 1, 1955, where are those presses presently located?

A. They are still in Peoria in the same position they were in 1955.

Q. Have any of those presses ever been disposed of?

A. No, sir.

Q. Are those presses presently in use at Peoria?

A. No, sir.

Q. In regard to the presses which you just listed as being at either Peoria or Wilkes-Barre did you yourself participate in the negotiations whereby International acquired those presses?

A. I either participated directly myself over a period of thirty-seven years or else I directed the negotiations or approved of them. They were handled by others.

Q. Going back now to the three single width presses, which I believe you stated are at Peoria, based upon your experience can you estimate the value, the present value of such
32 presses?

A. It would impossible for me to estimate the value of any press that we have today for the reason that that type press is not being built. You couldn't replace it, and we never kept a ledger account of the value of each single width press. Each press in Peoria is now twenty years old or over and has been fully depreciated.

Q. To your knowledge are there any records presently available at International which indicates the price paid at any time by International for the three single width presses presently at Peoria?

A. I would say that there are no records showing the value of each press for the reason that with one exception they were used presses. We got equipment from Cutler-Hammer. We got equipment from Hess and Barker. We got equipment from the Goss Company in Chicago and we combined all of these together in order to produce a complete press. But at no time did we keep a record of what any single individual press cost. Now, the only press we have today which was not put together
33 in parts or by components from various companies was one press in Peoria which we purchased directly from the Goss Company, which according to my memory cost approximately \$50,000 when we purchased it. That is the only new press we have or ever have had.

Q. When you state that International paid \$50,000 for that particular single width press, do you know when that press was purchased, the year?

A. Somewhere between '37, '38 or '40. I can't tell you exactly, somewhere about twenty years ago.

Q. Now, at sometime prior to or even after 1955 in regard to the single presses now at Peoria, to your knowledge was any value placed upon such presses for insurance purposes?

A. Yes, sir.

Q. Were they?

A. Replacement value by an insurance appraiser.

Q. Did this insurance appraiser, before placing a value upon such presses consult with you or anyone else at International?

A. He consulted with me, but I believe his appraisal was based on what I told him so much as what he was able to determine by his own efforts outside. Now, did he place

34 a value on the three single width presses?

A. He put a replacement value on each press.

Q. Do you know what the replacement value is?

A. No, sir.

Q. Are there any records?

A. We have his appraisal.

Q. Where would those records be, sir?

A. The appraisal is in Wilkes-Barre?

Q. Are they readily available to you?

A. Yes, sir.

Q. Going now to the single width presses which are located at the Parsons Plant, do you know how much International paid for any one of those presses?

A. No, I do not know for the same reason that I didn't know the value of the presses in Peoria because they were bought from—sections were bought from various people. Tensions, for instance, would have been from the Hoe Company, motor equipment from Cutler-Hammer, something else from others, and then when combined they all added to our machinery

35 account, but did not give us an individual value on each press.

Q. Is there any press presently now at the Parsons Plant which was purchased new much like the press you spoke about a little while back at Peoria which cost \$50,000?

A. No, sir.

Q. In regard now to the presses at the Parsons Plant, was an insurance appraisal ever placed upon such presses?

A. Yes, sir.

Q. Do you know the appraised value put by the insurance company upon such presses?

A. No, sir.

Q. Do you have such records available?

A. Yes, sir.

Q. And are they also easily accessible to you, sir?

A. Yes, sir.

Q. Now, in regard to the insurance appraisal, does the insurance appraisal break down each press or is it a lump sum?

A. It breaks down each press.

Q. Does it go further than that and break down the parts which are used incidentally to the press?

36 A. No. He takes the press and figures the replacement value as a whole.

Q. In regard to supplemental parts such as folders, would they be included in the valuation of the press?

A. When he figures the appraisal, he figured what it would cost to reproduce the whole press including folders. Now, if I might explain further how difficult it is to keep a value on this, it might make it clearer in your own mind. We have one press, Number 1999 which is thirty-seven years old. We bought the lower two decks of that from a small newspaper in Pittston, Pittston Press. We bought the two top decks from Allentown, Pennsylvania. We patched the two together and we picked up the motor from somewhere else. That was thirty-seven years ago and that press is still in operation so that, frankly, I think I can make clear how it is impossible for us to figure what it really cost us to put it there. But, the appraiser did figure what he thought it could be replaced for.

37 Q. In regard now to the value, is it your testimony that most of the presses, or in fact all of the presses outside the one you just mentioned in the possession of International were purchased in the 1920's?

The WITNESS: Will you repeat that please?

Mr. FELDMAN: Will you repeat the question?

(Whereupon the question was read by the reporter.)

A. No, sir.

Q. When were they purchased, sir?

A. Over the years from 1924 until, I think the last one was possibly eight or nine years ago. I can't say just when we put each press up, but it was spread over the years. As we grew

and needed presses, we installed them but I have no date as to when each one was installed.

Q. Is it your further testimony that no appraisal can be put upon the presses because they represent to a large extent the ingenuity and resourcefulness of people at International of making the press meet specific requirements?

38 A. I don't know how the appraiser works. I don't know just how he went about getting the figure, but it seems to me in view of what you just said it would be extremely difficult.

Q. I am talking about in the point of view of your appraisal?

A. Yes, I would say it is very difficult to put a value on it.

Q. Would that stem because of the uniqueness of the machinery as far as International is concerned?

A. Each press was rebuilt to suit our particular convenience and for us to be able to try to do the work more rapidly. The manufacturers really never built this type of press particularly for color printing. The adjustments and the changes had to be made by the color printers.

Q. Now, what you just stated in regard to the Parsons Plant, would that also be applicable to the Sheldon Plant in regard to the value of the presses there?

A. That is right.

Q. And in that case also was an insurance appraisal placed upon each individual press there?

39 A. With the possible exception of one, 2392 and 2392-a. We might have installed since the appraisal was made. I am not certain.

Q. Do you recall when that press was purchased by International?

A. I am hazy about it. Eight or ten years ago. I am not sure.

Q. Is it presently functioning at International's plant?

A. Yes, sir.

Q. Since June 1, 1955 has International ever acquired any additional printing press other than the ones you just mentioned?

A. Several.

Q. Can you enumerate those please?

A. One press which we purchased out of Baltimore from the Baltimore Post was purchased at the instigation of the Greater Buffalo Press for their use in Sylacauga. That number was press 2022. Now, there were several other presses purchased

from the Journal American in New York, some complete—that is, some without folders, some without motors, one more or less as junk, and I have never had knowledge of the numbers of those presses. That is, the serial number. Offhand, I can't tell you exactly what we paid or what they cost us.

Q. You say how many were purchased from the Journal American?

A. I think two. I am not sure. I think two. I didn't handle—

Q. Negotiations?

A. Negotiations.

Q. Where are those presses that were purchased?

A. They are in a warehouse, in one of our warehouses, dismantled.

Q. Do you recall how much International paid for those two presses?

A. I am sorry. If I attempted to do that, I wouldn't be able to give you an accurate answer. We paid junk price for one. We might have paid \$32,000 for another and it cost us something like \$70,000 or \$80,000 to get them out of New York and take them to Wilkes-Barre.

Q. Thereafter were they worked upon?

A. They have never worked. They are still lying, waiting some day to be used or to be used for parts.

Q. Was it the intention of International when purchasing those presses to use them or to merely use them to supplement parts of other machines?

A. Partly for parts, but partly to use them because some day we must move out of the Parsons Plant because of settling conditions underneath and we will have to have additional equipment running at the Sheldon Plant before we can move out of the Parsons Plant.

Q. In regard to press 2022 do you recall how much was paid for that press?

A. I think the purchase price was about \$32,000 or \$33,000.

Mr. MOORE: Pardon me. I am not sure if 2022 has been identified yet.

Mr. FELDMAN: Yes. This is off the record.

(Discussion off the record.)

Q. This press 2022, where was that press purchased from?

A. Baltimore Post.

Q. For the purpose of refreshing your memory, Mr. Gorman, I show you plaintiff's Exhibit 15, which is annexed to the affidavit of Raymond M. Carlson, in the moving papers herein of the Order to show cause and ask you whether this refreshes your memory as to the exact amount paid by International for press 2022?

A. \$32,500.00.

Q. Well, is your memory refreshed now?

A. That is right.

Q. Now, based upon your present memory, how much did International pay for press 2022?

A. \$32,500.00.

Q. And did that price include the transportation cost from Baltimore to Wilkes-Barre?

A. No, sir.

Q. Do you know how much that transportation cost was?

A. No, I do not.

Q. Have you any idea, even approximately, what it was?

A. No, sir.

43 Q. At the present time, does International have in its possession or control, press 2022, which it purchased at Baltimore?

A. No, sir.

Q. Where is that press at the present time?

A. In Sylacauga, Alabama.

Q. Was that press shipped from Wilkes-Barre to Sylacauga?

A. Yes, sir.

Q. You know the date when that press was shipped from Wilkes-Barre to Sylacauga?

A. No, sir.

Q. Was it in the last two years?

A. Within the last two years.

Q. Now, at the time press 2022 left International Plant at Wilkes-Barre, do you know what the value was of that press?

A. No, I couldn't say that.

Q. Do you know whether the value was less or more than the value or the purchase price originally paid by International?

A. I would say it was more.

44 Q. What, if anything, happened in the interval of time when International acquired press 2022 and shipped it out to Sylacauga to enhance the value?

A. This would be a bit of a long answer, but I must do it in order to make it clear.

Q. That is all right, go right head.

A. Press 2022 was purchased, it was what was known as a 6-deck high press, consisting of 6 decks high and 12 printing couples. It was not equipped for printing five plates wide. It was equipped for four plates wide only. As a 6-deck press, the Baltimore Post ran that at a speed of approximately 20,000 per hour, 4-page sections on each side. The reason for what we might call a low speed, was because it was so high and so awkward and it was so difficult to handle. After we purchased that price at the instigation of Greater Buffalo, we were told by Greater Buffalo that that was a mistake to set up a 6-deck press, that the same cylinders and printing couples should be used, but they should be 4 decks high, and three tiers and three stacks of legs, rather than high, because that would make it less unwieldy and more easy to operate and to get speed out of.

Also, at the instigation of Greater Buffalo Press, the
45 cylinders were changed so that instead of 4-plate wide, it was a 5-plate wide machine on 8 of the printing couples and 4-plates wide on 4 of the printing couples, thus adding greatly to the flexibility of the press, it becoming possible when we are using a 5-plate wide press, to do approximately the same kind of work that you would have to use 16 cylinders for otherwise. Then there was a clip arrangement installed which held the plates on the press better and this new clip arrangement was prepared, was sent to us, the clips and ring and so forth were sent to us by Buerk Machinery Company of Buffalo, the purpose of that being to be able to use third plates or one-sixth plates, rather than just half pages, or rather than three-third pages together, as a whole. In other words, the press was vastly improved from a flexibility standpoint against what it was when it was operated in Baltimore.

Q. Going now back to the time when International Press acquired or purchased that press, at that time, was that considered a so-called double width press?

46 A. That is a double width press.

Q. How many cylinders did press 2022 have at that time?

A. Twelve printing couples. That means twelve cylinders, number twelve impression cylinders.

Q. Were there any other presses in the possession or control of International at that time, which had twelve cylinders?

A. I told you before about the combination press, press 2042 and 2042-a when operated together, had twelve cylinders, but it was not set up as one press really; it was set up as two presses, one in front of the other. Press 2392 and 2392-a also had twelve cylinders, but four of the cylinders were set apart from the eight cylinders and we do not now consider that that was as good an arrangement as was later put into effect when 2022 was erected.

Q. At any rate then, when International acquired press 2022, it was the only single press in the plant at International, which had twelve cylinders aside from the combined presses you just spoke about, is that correct?

A. That is correct.

Q. Based upon your experience, is there greater facility in getting out production when you have more cylinders?

A. The more cylinders you have, the more pages you can print on the one press. Now, if we want to print a 14-page section, we have got to use 2 eight-cylinder presses with the same number of men on each press, but when you have a 5-plate wide, 12-cylinder double width press by itself you print fourteen pages or sixteen pages without increasing the crew by only one or two men.

Q. At the time International acquired press 2022, were there any presses at International's plant which contained cylinders capable of holding more than four plates?

A. No, sir. As a matter of fact, I never saw in my thirty-five years, any other press with the exception of one that was used at Greater Buffalo that is capable of printing more than four plates across.

Q. And that would still be applicable at the present time as far as International is concerned?

A. As far as I know there are no other presses in the country that are built to carry five plates wide across.

Q. Is it your testimony then that International after acquiring press 2022, enlarged the cylinders so that five plates were able to be inserted on the cylinder instead of the normal four plates, is that correct?

A. We did not enlarge the cylinders. The cylinders remain the same size, but the clips and rings were so arranged so that the same plates could go on the same arrangement, but it was impossible to enlarge the cylinders. That can't be done.

Q. As far as the frame, the frame remained the same?

A. That is right. In other words, within the same frame you could have cylinders that would carry one more plate on each cylinder.

Q. This operation of making it possible for the cylinder to hold an additional plate, how long an operation would that take as far as manpower at International?

A. I have no specific time for each operation that was done. The job of erecting that press and lining it up and so forth, was done over a period of three years when the maintenance crew had nothing else to do, they would work on that and it took us three years to complete the job as far as we
49 went.

Q. Prior to press 2022 coming to Wilkes-Barre, was the space where the press was placed, occupied by another machine?

A. No, sir.

Q. What equipment, if any, was in the location which the press thereafter occupied?

A. As I recall, it was junk pretty much. It was a separate building. It was not in the same building.

Q. What building was the press worked on?

A. In our adjoining building to the main plant.

Q. That would be what, the Sheldon Plant?

A. Yes.

Q. Was there a pit made or any great innovation made in the plant in order to facilitate working on press 2022?

A. In Wilkes-Barre?

Q. Yes.

A. There was no pit made.

Q. Mr. Gorman, I believe I asked you a little while back if you know the value of press 2022 when it left International's plant at Wilkes-Barre, and I believe you testified that you don't recall?

50 A. I wouldn't attempt to pick that figure out of the air.

Q. For the purpose of refreshing your memory, I show you a balance sheet of International Color Printing Company, dated

December, 1959, and direct your attention to the balance sheet contained therein as of January 2nd, 1960, and refer down to the page, to "Other Assets," and the sub-heading "Press 2022," and ask you to look at that page?

A. Yes, sir.

Q. Does that refresh your memory as to the value placed upon Press 2022 when it left International's plant?

A. At that time, the press did not leave Wilkes-Barre at that time. The press did not leave until, I think, approximately a year later than that. The total value of the press as of a certain date, is contained in the reports which you asked me for, but I can't remember exactly what it was; somewhere in the neighborhood of \$110,000.00, \$120,000.00, \$130,000.00. I can't remember exactly.

Q. Approximately what was the value placed when it left there, about the time it left International?

A. Let's say \$125,000.00, \$130,000.00.

51 Q. During the time that the press was at International's plant at Wilkes-Barre, namely, press 2022, was any insurance appraisal made of that press, to your knowledge?

A. No, sir. We have not had an insurance appraisal in ten years.

Q. Was that press insured at all while it was being worked?

A. I believe the Accounting Department insured the press for whatever amount they happened to have as of a certain date, and changed that from time to time over every quarter or every three or four months.

Q. Is it your testimony then now, Mr. Gorman, that the value of the press more than doubled because of the work put on it to make it such a unique type of press so far as printing of color comics is concerned?

A. Well, parts and so on, that went on there, yes, sir.

Q. Now, during the time that press 2022 was worked upon by personnel of International, did International purchase the extra parts or required parts?

A. We purchased parts for which we were later reimbursed by Greater Buffalo.

52 Q. And was International reimbursed for the purchase price of press 2022?

A. Yes, sir.

Q. When were they so reimbursed, do you recall, sir?

A. About four months ago, three or four months ago.

Q. At any time prior to three or four months ago, was International ever reimbursed for either purchase price or the labor or parts put into the machine?

A. I don't recall that, no.

Q. Outside of press 2022, were there any other presses shipped out of International to Sylacauga or any other subsidiary of Greater Buffalo?

A. No, sir.

Q. Were any presses since June 1, 1955, shipped out of Wilkes-Barre to Greater Buffalo's plant at Buffalo or Dunkirk, to your knowledge?

A. No, sir.

Q. Do you have available with you, any breakdown or general description as to the stereo-type machinery now in the possession of International?

A. Yes, sir.

Q. Can you give us such a breakdown?

53 A. This information was obtained by making a physical inventory of the equipment since this order was received. You want me to read them off?

Q. Yes.

A. 16 tank plate nickeling system with rectified filter, et cetera.

Q. Do you recall when International purchased that equipment?

A. About six years ago.

Q. Do you know how much was paid for that equipment?

A. No, I don't, because that, as in the case of the other things, is a combination of what was purchased from various sources and we have never kept an individual account on each machine.

Q. Before going down this whole list, I will ask you this general question: Has an insurance appraisal been made upon this equipment you are reading off now?

A. Some of this equipment was moved from our Parsons Plant to the Sheldon Plant and was included in the appraisal which was made ten years ago.

Q. And is that the present appraisal that you are operating under for insurance purposes?

A. Yes. We have had no appraisal since ten years.

54 Q. What has happened in regard to equipment which came or was purchased by International since ten years ago?

A. Well, in case anything should happen, we would have to go back over our books and try to see what we have added to our machinery total. We haven't had an appraisal made since.

Q. Now, do you have with you the appraisal figures in regard to the equipment that you are now reading off?

A. No, sir. It is a very, very large book and I wasn't asked to take it, so I didn't take it with me.

Q. I am not interested in why or anything like that. Would that be available to you whenever you wanted it?

A. Yes.

Q. Is it easily accessible?

A. Yes.

Q. Will you go down and indicate the equipment?

A. One Della metal saw; one standard conveyor system to move plates; one plate milling machine; one El rod machine-old; in other words, it is hardly used; one plate shaver;

55 one 1500 amp spare rectified; one 10,000 pound capacity

Goss electric metal plug; two electric mat ovens; two hoe casting boxes; two hoe tail cutters and shavers; two hoe precision plate shavers; one plate splitter; one double ring cutter; one single ring cutter; two sta-hi mat formers; eight hoe single plate rodders; assorted plate cans, plate racks and shelving; six mat ovens; two Niagara Power shears; one 4-way mat cutter; two floor fans; one high frequency mat drier; marking tables. That is what we have in the stereo-type equipment as a result of physical inventory made last week.

Q. Going back and just reviewing that list briefly, what has been done—withdraw that—. Going back and looking over that list, what purchases in regard to stereo-type equipment have been made since June 1st, 1955?

A. This is not going to be accurate—

Q. No, just based upon your present knowledge.

A. Two marking tables, one high frequency mat drier, one four-mat cutter, two Niagara Power shears, six mat ovens, nickeling system, conveyer system, two electric mat
56 ovens, one plate splitter, one double ring cutter and one single ring cutter.

Q. Do you know the purchase price of any of that equipment at all?

A. No, I don't.

Q. Can you place any value upon that equipment?

A. I am sorry, I couldn't. For the past five years I had very little to do with the actual purchase of machinery and I don't know exactly what it cost.

Q. Now, are there records available which show what the purchase price was for that equipment?

A. On that particular list of machinery, I think so.

Q. And who would have such records?

A. Our Accounting Department.

Q. And is that readily accessible to you?

A. Yes, it is.

Q. Since June 1st, 1955, has International ever shipped out of its plant, any stereo-type equipment?

A. I don't recall.

Q. Has it ever shipped any such equipment to Greater Buffalo at Buffalo or at Dunkirk?

A. Out of the Peoria Plant.

Q. You did?

57 A. Yes.

Q. And what equipment was shipped from Peoria?

A. One combination joiner and plate saw with saddle; one Goss saw and trimmer, with edge trimmer; one casting box, complete with vacuum pump; one spare sout for casting box; one sta-hi mat former; one hoe precision shaver with spare motor; one hoe tail cutter and trimmer; one two-wheel grinder; two plate rodders; one box miscellaneous cutters and knives; one 50 horsepower spare motor; one rectifier; one motor generator; one metal cabinet; three electric panel boards for stereo; one electric drill; five large fans; eleven vent fans; six CO2 tanks; three medium CO2 tanks; six small hand extinguishers; three hose reels. That is all.

Q. At the time or interval of time——

A. I beg your pardon, one Royal typewriter.

Q. When was this equipment shipped, do you recall the year?

A. About 1958 or 1959.

Q. Was any stereo equipment shipped at or about that time from Peoria to Wilkes-Barre?

A. Not that I recall, no, sir.

58 Q. Is there presently any stereo-typed equipment at Peoria at all?

A. I don't believe so.

Q. Is it your——

A. There might possibly—wait just a minute—there might possibly be a very old nickel tank there.

Q. Is it your testimony then that the bulk of the stereo-type equipment at Peoria was shipped to Greater Buffalo?

A. Yes, sir.

Q. At any time has International shipped any stereo-type equipment to Dixie Color Printing Company Corporation at Sylacauga?

A. We sent a double ring cutter in January of this year. I don't have any recollection of anything else.

Q. Do you recall any plate cutting saw being sent to Sylacauga?

A. I don't know that that is stereo-type equipment.

Q. Oh, I see. But was such a plate cutting saw sent?

A. The description I have here is metal saw. I don't know what it was, whether it was for cutting plates or what. It was a metal saw.

59 Q. Outside of these shipments that you spoke about, the one to Sylacauga and the others to Greater Buffalo, were there any other type of stereo-typed equipment shipped out of any of the plants of International from June 1st, 1955?

A. Not that I can recall.

Q. I believe, Mr. Gorman, you have described printing press equipment and stereo-typed equipment. What other classifications are there of equipment in the possession or control of International?

A. Well, there are lift trucks for handling the shipping and handling pallets and skids and then there are pallets and skids, probably air-compressors and odd items like that, and the main bulk of our machinery, of our equipment, is a press room and stereo-type equipment.

Q. Now, the other types of equipment other than what you have just mentioned, do you have any idea what their present value is?

A. No, sir.

Q. For insurance purposes, has any value ever been placed upon such equipment?

60 A. The only thing they do is keep a record of what goes into the machinery account and increase the insurance from time to time.

Q. So the value of such equipment would be reflected in the insurance appraisal?

A. Well, it is minor, this equipment is minor. The pallets and skids, for instance, might last only three months and they have got to be replaced and so forth. They are made out of wood, and the lift trucks are now probably depreciated because I don't think we have any under seven or eight years old.

Q. At any rate, for insurance purposes, there would be a value placed upon all equipment you spoke about, and then there would be a general lump sum value placed on other equipment?

A. They make a lump sum addition from time to time to the insurance value.

Q. Then would the value placed upon all your equipment and press at your Wilkes-Barre plants be reflected in your insurance policies or schedules attached thereto?

Mr. MOORE: I am going to object to the form of the question on the grounds that it calls for a conclusion. I will
61 let the witness answer it, but as anybody knows, replacement values and market values are two different things.

Mr. FELDMAN: Let the witness answer the question.

The WITNESS: May I have the question again, please?

(Last question read.)

The WITNESS: The replacement value is identified in the insurance policies, is considerably higher than the book value of the machinery on the books.

By Mr. FELDMAN:

Q. At any rate, some value has been placed by one insurance company or more insurance companies upon such equipment, whether true or inaccurate, as to the actual value?

A. Yes, sir, as to the replacement value, as to the insurance value, yes, sir.

Q. That is right. In other words, some insurance value has been placed?

A. Yes.

Q. And that would apply generally to all the equip-
62 ment you spoke about, some may be specified and others would be lumped together, is that correct?

A. Yes.

Q. And is that insurance value as to all of the equipment, is that easily accessible and available to you, sir?

A. Yes, sir.

Q. Now, as to machine shop equipment, has any such equipment been shipped to Sylacauga?

A. Yes, sir.

Q. And will you enumerate, please, such equipment that was sent?

A. Two medium size lathes, with approximately nine foot beds; one small lathe with three and a half foot bed; one milling machine; two drill presses; one pipe threading machine; one emery wheel or bench grinder; one tool grinder.

Q. Any other equipment, sir?

A. Not that I can recall or have any record of.

Q. Was International reimbursed by Dixie Color Printing Corporation or by Greater Buffalo for such equipment you have just mentioned?

63 A. No, sir, because we expect to get that equipment back or be reimbursed for it. We haven't decided on what it might be worth, but we expect to get it back.

Q. In regard to reels which may be used on press 2022, to your knowledge, did International send any reels to Sylacauga?

A. Yes, sir.

Q. How many reels were sent?

A. Two, I believe.

Q. In regard to folders, were any folders sent to Sylacauga?

A. As part of the press.

Q. How many were sent, sir?

A. Two.

Q. Were they folders worked upon at International's plant in Wilkes-Barre prior to being sent down?

A. Yes.

Q. And is the same thing applicable to the automatic reels you just spoke about?

A. Yes, sir.

Q. To your knowledge was any insurance value placed upon the automatic reels or the folders sent?

A. Not as separate—

64 Q. In other words, they were considered—

A.—As part of the press.

Q. As part of the press?

A. Yes.

Q. Now, in addition to that equipment, were any folders ever sent to the Greater Buffalo plant here in Buffalo or Dunkirk?

A. I recall one.

Q. And what was that, sir?

A. That was a single width folder, which was sent up to them. They paid us for it and then they didn't want it and they sent it back.

Q. What about automatic reels?

A. There were some sent up there.

Q. How many?

A. I don't know.

Q. Would four be correct?

A. It might be four. I don't know.

Q. What about the folders, would that be one or two?

A. The only one I recall is the one.

Q. Is it possible it might be two?

A. It could be two.

65 Q. In regard to the equipment sent to Greater Buffalo plants at either Buffalo or Dunkirk, has International been reimbursed?

A. Yes, sir.

Q. And when did such reimbursement take place?

A. January of 1961.

Q. Do you recall when in January?

A. Let me say that—let's put it another way—we were paid currently by Greater Buffalo for work which was done in connection with the building in Sylacauga through the years 1957, 1958 and 1959, a total amount of about \$47,000.00 and then during the year 1960 we were paid \$48,000.00. In 1961 we were paid \$130,000.00. All told, we were paid by Greater Buffalo or Dixie, but I think almost entirely by Greater Buffalo, approximately \$243,000.00.

Q. Now, when you say \$243,000.00, did these payments take the form of a check or cash being paid to International—

A. Checks.

Q. Or at any time, did it take the form of a set-off as to money you owed them and then there was a balance?

A. It was a check.

66 Q. These were all checks?

A. These were all checks.

Q. They were all deposited in the account of International, is that correct?

A. Yes.

Q. Is there presently any money due International for equipment shipped either to Sylacauga or to Greater Buffalo?

A. I would say in the neighborhood of \$26,000.00.

Q. Is it your testimony then that International either has received payment or will receive payment or in lieu thereof, the return of any equipment which has been sent to Slyacauga?

A. Yes, sir.

Q. And is that true in relation to equipment sent to Greater Buffalo at either Buffalo or Dunkirk?

A. Buffalo paid us for anything that we sent up there, with the exception of a partial payment on, I think, oh, about \$20,000.00 on reels which the Accounting Department overlooked as something they didn't bill them for, which I presume will be paid for.

Q. Has International been paid for the stereo-type equipment which was sent from the Peoria plant to Greater
67 Buffalo?

A. We did not bill them for that because we considered we had no further use for it. It was depreciated and pretty much out of date.

Q. Prior to shipping it to Greater Buffalo, was any attempt made to sell it on the open market?

A. No, sir.

Mr. FELDMAN: We will take a recess at this time.

(Short recess taken.)

68

By Mr. FELDMAN:

Q. Going now, Mr. Gorman, to another subject, namely newspaper runs or accounts, going back to June 1955, do you recall or have any records which indicate the runs then being serviced by the Peoria Plant of International?

A. No, I don't know exactly what runs were serviced by Peoria at that time. I don't know—I don't have that record at that time.

Q. For the purpose of refreshing your memory I will read off a list of runs and will you tell me, one, whether you recall such a run being serviced by the Peoria Plant of International?

A. If I were to do that, Mr. Feldman, I would be guessing because sometimes we did print runs from out in that area in Wilkes-Barre because, although the transportation rate was higher, we saved in plate saving because we had the same plates on the press. Therefore, I don't know. I know all the runs we were printing as of June 1, 1955, but I don't know which ones exactly were in Peoria.

Q. Do you recall any runs which were being printed
69 there? Have you got the list there?

A. Yes. I have a list right here. I will be glad to show you this list.

Q. I will guess at it. Suppose you tell me the runs you are sure of.

A. I am guessing. I don't know whether we had been in Peoria.

Q. Go through and tell me which ones you presently recall being printed?

A. Madison, Peoria Journal, Tulsa-Wichita Beacon, Houston. We printed in both places from time to time, depending on what kind of a run it was. We sometimes printed it in Wilkes-Barre, Rockford, Wichita. I am uncertain about San Angelo or Abilene, Corpus Christi, Tyler. I am uncertain about Whichita Falls, Springfield Register, Springfield News Sun, Ohio News Sun—

Q. Excuse me. You are uncertain or they were printed?

A. No, I think they were printed. Anderson, Indiana; Gary, Indiana; Sioux Falls, South Dakota; Davenport, Iowa; St. Joseph; Albuquerque; Shreveport. I don't recall the
70 other three and I am not one hundred percent certain about the others. I think they were printed in Peoria.

Q. Are there any runs on this piece of paper which you have before you which you are not certain about being printed out of Peoria or Wilkes-Barre in June 1955?

Mr. MOORE: Pardon me. Would you have that marked?

Mr. FELDMAN: Yes. I will ask that this piece of paper marked "Peoria runs" be marked as Plaintiffs Exhibit 1 for identification.

Mr. WEISS. Why don't you take the numbers up from where you left off?

Mr. FELDMAN: No. I won't accept that. I think it is best that the deposition speak for itself.

(Whereupon the paper marked "Peoria Runs" was marked Plaintiff Exhibit 1 for identification.)

71 Mr. FELDMAN: For the record let the record indicate that Plaintiff's Exhibit Number 1 for identification has a title "Peoria Runs" and lists under it certain newspaper accounts.

Q. Referring now to Plaintiff's Exhibit Number 1 for identification, are there any runs listed on the page there which to

your knowledge were not printed in June 1955 at either Peoria or the Wilkes-Barre plant of International?

A. I have to guess. I don't know.

Q. You don't know?

A. No.

Q. Do you have in your possession any list which indicates the runs being serviced or printed in whole or in part in June 1955 by any of the plants of International?

A. Not as of June 1, 1955. I think the way the question was asked that is the information you asked.

Q. Well, just referring to the specific question, you say "No" sir, is that right?

72 A. No, sir.

Q. What is the nearest date that you have such a list?

A. The only date I have, the only information of which I am not one hundred percent certain is every run that we serviced at some time or other since June 1, 1955.

Q. Do you have such a list in your possession?

A. Yes, sir.

Q. Does your list indicate to you when International ceased servicing a particular run if International is not printing for that account now?

A. I have two lists, one list which shows the name of every run which we serviced at any time since June 1, 1955, and the other list shows papers which we have printed some time since June 1, 1959 which are now being printed by other plants.

Q. All right. Going now to the list, can you tell us the runs which International serviced at any time from June 1, 1955 and after commencing to service that run ceased printing for the account?

A. Yes, sir.

73 Q. Now, will you give us such a list?

A. Tallahassee, Florida Capital.

Q. Excuse me. You are presently servicing this?

A. No, this is the list of runs which we have serviced but are not servicing now. Is that what you want?

Q. That is all right. Who presently is servicing that, do you know?

A. I don't know.

Q. Do you recall when International ceased servicing that account?

A. The last release was June 5, 1955.

Q. All right, sir. The next one?

A. Lebanon, Pennsylvania Daily News.

Q. When did International cease servicing that account?

A. June 12, 1955.

Q. Do you know who presently services that account?

A. I don't know, no.

Q. Next one?

A. Norfolk, Virginia, Ledger Dispatch. Do you want me to go on? Last release——

Q. Yes.

74 A. July 31, 1955. I think it is now a part of a combination of newspapers in Virginia known as the Norfolk, Virginia Pilot and I don't believe that they have a supplement as of today.

Q. Now, in regard to the runs you previously testified to, I believe I asked you whether or not you know who presently services those runs which International lost or gave up. Now, as to those runs, can you tell us who immediately commenced servicing those runs when International ceased printing for that account?

A. I have no way of knowing, generally speaking, where a run goes when it leaves us unless I get it by gossip or report on it from the field. I don't know.

Q. As to those runs did you receive any information as to where the run went?

A. No, sir.

Q. You did not. Now, you may continue.

A. And Andalusia, Alabama, Covington Dispatch, Last release August 14, 1955. I don't know where it is now being printed. Is that what you want me to do?

75 Q. I want to know immediately after International ceased printing the run who commenced if you know?

A. I don't know.

Q. You do not know.

A. No.

Q. All right, sir.

A. New Orleans, Louisiana Item, last release 9/11/55. The newspaper to the best of my knowledge is now out of business and went out of business, I think, at that time. Ready?

Q. Yes, go ahead.

A. Mt. Pleasant, Texas, Times, last release November 13, 1955. I don't know who is printing it and I don't know who started to print it after we gave it up. Havana, Cuba Post, 12/25/55. The newspaper is out of business. Corpus Christi, Texas, Caller, December 25, 1955. I don't have any record of who is now doing it. Oh, Marshall, Texas, News Messenger, December 25, 1955. I gave you Corpus Christi, Paris, Texas News, December 25, 1955; San Angelo, Texas Standard—

Q. Excuse me. Do you know who presently prints for
76 Paris?

A. No.

Q. Do you know who commenced printing when you gave it up?

A. I should know that, but I don't. I can't recall it.

Q. Go ahead.

A. San Angelo, Texas; Abilene, Texas, Reporter, 12/25/55; Big Spring, Texas, Herald, 12/25/55. If I know who did it, I will—

Q. All right, sir.

A. Dennison, Texas, Herald, 12/25/55; Snyder, Texas, News, 12/25/55; Greenville, Texas, Banner, 12/25/55. Now, from the fact that we ceased printing all the same date, it appears that this might have been a group of newspapers, but I am not certain.

Q. All right, sir.

A. New Kensington, Pennsylvania, Dispatch, January 22, 1956. I do not know who was printing and I never did know. Artesia, New Mexico, Advocate, 5/27/56 last release. I do not know who is now printing. Lakeland, Florida, Ledger, 6/10/56 last released. I believe it is now being printed by Southern Color Printing Company at Newport News and I
77 think it went there immediately after we lost it.

Topelo, Mississippi, Journal, last release July 1, 1956. To the best of my knowledge it is being printed by Southern Color Printing Company at Newport News. Wichita Falls, Texas, Daily, July 1, 1956. I don't have a record of where it went or where it is now. Gulf Port, Mississippi, Gulf Coast News, July 8, 1956. I don't have a record of where it went or where it is now.

Lovington, New Mexico, Press, July 15, 1956. I don't have a record of where it went or where it is now. Shreveport, Louisi-

ana, Times, 9/2/56 last release. I think it is now being printed in Lufkin by Southwest.

Q. Southwest?

A. Orangeburg, South Carolina, Times Democrat, last release 9/16/56. I believe it is now being printed and has been printed since that date by Southern Color Printing Company at Newport News. Statesville, North Carolina News, 10/28/56
78 last release. I don't know where it is being printed.

Springfield, Illinois Citizen Tribune, 12/2/56. I don't know where it is being printed. Monroe, Louisiana, News Star World 12/30/56 I believe it is now being printed in Lufkin, although I am not absolutely certain. Middletown, New York, Daily Record, January 6, 1957. I don't know where it is being printed and I don't know where it went after we lost it.

Pittsburgh, Pennsylvania, Sun Telegraph, March 10, 1957. We were printing one small section of the Pittsburgh Comic supplement and the major portion was being printed on the Hearst presses in Chicago. After this section was taken out of our plant, it was moved to the Hearst Presses in Chicago.

Winston Salem, North Carolina, Journal and Sentinel, March 31, 1957 last release. To the best of my knowledge it is now being printed by Southern Color Printing Company at Newport News.

Portsmouth, Virginia, Times, last release March 17, 1957.

To the best of my knowledge it is now being printed
79 by Southern Color Printing Co. at Newport News. Philadelphia, Pennsylvania Mayfair Times, last release April 21, 1957. I have no knowledge as to where it is being printed. Rochester, New York, Citizen, April 21, 1957. I have no knowledge as to where it is being printed.

Raleigh, North Carolina, Times, June 16, 1957. It is now being printed by the Star Color Printing Company at Wilmington, Delaware.

Jackson, Mississippi, Clarion Ledger, July 7, 1957. I don't know where it is being printed. Lake Charles, Louisiana, American Press, August 11, 1957. I don't know where it is being printed.

Decatur, Alabama, Daily, 9/29/57 last release. I don't know where it is being printed. Knoxville, Tennessee Journal, 10/9/57 last release. Merged with another newspaper in Knoxville and after that we ceased printing for it and they discontinued their

supplement. Peoria, Illinois, Journal. Now, I think I should explain that at no time did we have contracts for these newspapers. These newspapers were contracted for by King
 80 Features Syndicate and they passed the work onto us.

When I say that the work was transferred to another plant, it isn't that we lost the contract. King Features may have lost it or they may have transferred the work directly themselves or consented to the transfer.

Peoria, Illinois, Journal, 12/15/57. I think it is now being printed by Greater Buffalo Press in Buffalo.

Tulsa, Oklahoma, World, December 15, 1957, now I believe being printed at Lufkin.

Fort Wayne, Indiana, News Sentinel, December 15, 1957. I believe it is now being printed in Buffalo. Wichita, Kansas, Beacon, December 22, 1957. I believe it is now being printed in Lufkin.

Gary, Indiana, Post Tribune, December 22, 1957, now being printed in Buffalo. Madison, Wisconsin, State Journal, December 22, now being printed in Buffalo. Rockford, Illinois, Star, December 22, 1957, now being printed in Buffalo; Springfield, Illinois, State Journal, December 22, 1957, now being printed in Buffalo; Colorado Springs, Colorado, Free

81 Press, December 29, 1957, now being printed in Buffalo; Cedar Rapids, Iowa, Gazette, December 29, 1957, now being printed in Buffalo; Champagne, Illinois, News, December 29, 1957, now printed in Buffalo; Danville, Illinois, Commercial News, December 29, 1957, now being printed in Buffalo; Davenport, Iowa, Democrat, now being printed in Buffalo, the release date 12/29/57; Lewiston, Idaho, Tribune, 12/29/57, now being printed in Buffalo; St. Joseph News Press, December 29, 1957, now being printed in Buffalo; Springfield, Ohio, News Press, 12/29/57, now being printed in Buffalo.

Topeka, Kansas, Daily Capital, January 5, 1958, now being printed in Lufkin; Aberdeen, South Dakota, American, January 5, 1958, now being printed in Buffalo; Casper, Wyoming, Tribune, January 5, 1958, now being printed in Buffalo; Grand Forks, North Dakota, Herald, January 5, 1958, now being printed in Buffalo; Great Falls, Montana, Tribune, January 5, 1958, now being printed in Buffalo; Hutchinson, Kansas, News

Herald, January 5, 1958, now being printed in Lufkin;
 82 Joplin, Missouri, Globe, January 5, 1958, now being printed in Buffalo.

Orange, Texas, *Leader*, January 5, 1958. I don't know where it is being printed. Texas City, Texas *Sun*, January 5, 1958. Don't know whereabouts of present printing. Rapid City, North Dakota, *Journal*, January 5, 1958, printed in Buffalo; Salina, Kansas, *Journal*, January 5, 1958, now being printed in Lufkin; Santa Fe, New Mexico, *New Mexican*, January 5, 1958, Lufkin; Springfield News *Leader*, January 5, 1958, Buffalo; Tyler, Texas, *Courier*, January 5, 1958, Greater Buffalo—rather Buffalo. Tyler, Texas, *Courier*, January 5, 1958, Lufkin; Greenville, South Carolina, *News Piedmont*, January 5, 1958, Southern Color Printing Company at Newport News; Detroit, Michigan *Polish Daily*, January 5, 1958. I don't know. Asheville, North Carolina, *Citizen*, January 5, 1958, now being printed by Southern Color Printing Company at Newport News; Stephenville, Newfoundland, Canada, *News*, January 26,—I don't know the name of the paper—1958. I don't know where it is being printed.

83 Longview, Texas,—I don't know the name of the paper—February 2, 1958. I don't know where it is being printed. Morehead City, North Carolina—I don't know the name of the paper—April 13, 1958. I don't know where it is being printed.

Denton, Texas, *Record Chronicle*, March 23, 1958. I don't know where it is being printed. Elizabeth City, North Carolina, *Advance*, 5/25/58, now being printed by Southern Color Printing Company at Newport News.

Santiago, Cuba, *Diario Del Cuba*—Mr. Castro will have to give you the answer to that. I don't know where it is being printed.

Houston, Texas, *Post*, December 7, 1958, either in Greater Buffalo or Lufkin. I think in Lufkin. Morgantown, West Virginia, *Dominion*, 12/14/58. I don't know where it is being printed. Austin, Texas, *Statesman*, January 18, 1959, Lufkin; Port Arthur, Texas, *News*, January 18, 1959, Lufkin; Waco, Texas, *Tribune*, January 11, 1959, Lufkin; Kilgore, Texas, *News Herald*—I don't know—January 11, 1959; Pasco.

84 Washington, *Tri City Herald*, February 22, 1959. Buffalo; El Pais, Havana, Cuba—we never had release dates on those. They went by numbers—1028-60; *Excelsior*, Havana, Cuba, 1368-60; Havana, Cuba, *El Mundo*, 1493-60; *Information*, Havana, Cuba, 843-60; *Diario Del Marine*, Havana, Cuba, 1429-60; Rome, Georgia, *News Tribune*, January 10, 1960, now

being printed by Southern Color Printing Company at Newport News.

Lynne, Massachusetts, Telegram, January 24, 1960. I don't know where it is now being printed. Dayton, Texas, Sun, February 14, 1960. I don't know where it is being printed. Wichita, Kansas, Eagle, 6/5/60 last release, Lufkin; Ciudad Juarez, Mexico, Correo, 24-60. I don't know where it is being printed.

Garden City, New York, 6/19/60, Eastern Color Printing Company, at Waterbury; Rosenberg, Texas, Herald, July 10, 1960. I don't know where it is being printed. Pasadena, Texas, Citizen, July 10, 1960. I don't know where it is being printed. Pecos, Texas, Daily Enterprise, August 28, 1960. I don't know where it is being printed. Raleigh, North Carolina, News and Observer, October 9, 1960, Star Color Printing Company at Wilmington, Delaware; St. Albans, West Virginia, Times, October 9, 1960. I don't know where it is being printed.

LaNacion Dominican Republic, 13-60. I don't know where it is being printed. Austin, Texas—perhaps I might have duplicated. At any rate, it is being printed in Lufkin. Brooklyn, New York, Eagle, 11/20/60, out of business.

La Eafera, Caracas, Venezuela, 860-60. We don't know where it is being printed. Bridgetown Barbados, Advocate, 71-61; Diario Del Yaqui Ciudad, Obregon, Mexico, 25-61; Mexico City, Mexico News, March 19, 1962. I don't know where it is being printed and I don't know where those Spanish papers are being printed. I just referred to. McKeefport, Pennsylvania, Daily News, April 16, 1961. I don know where it is being printed.

Q. Mr. Gorman, I believe that you testified that as to certain runs you do not know what happened to them because the contract between the newspaper and the King Features was not your particular province, is that correct, sir?

A. That's right.

Q. In regard to runs which were transferred or left International and commenced being printed at Lufkin, Texas, were such transfers after discussions, or did they follow discussions you had with anyone at Greater Buffalo Press?

A. There were two types of runs transferred. First, runs which we were doing in Peoria. We discussed with Greater Buffalo and transferred them to Greater Buffalo for the reason that there would be a greater savings of transportation. Other runs out of Peoria, we transferred to Wilkes-Barre where the saving

wouldn't be as great and we continued to print those in Wilkes Barre; and then in the meantime it helped take up the slack for the runs which were transferred out of the Peoria Plant to Buffalo. Buffalo gave us quite a considerable part of their business, so that in effect we have as much from Buffalo as they have from us.

Now, there are other papers transferred to Lufkin
87 which I did not consult with Buffalo about simply because the runs were simply cancelled by King Features for the reason that Buffalo took them from King Features.

Q. Did you ever have any discussions with anyone at King Features as to the desirability of transferring runs from Wilkes Barre to Lufkin?

A. From time to time I discussed with Mr. Nicht, sometimes after the runs were already transferred and sometimes before they were transferred.

88 Q. Now, the ones that were transferred to Lufkin, were with your consent and approval?

A. Yes, sir.

Q. In regard to runs which were printed to Peoria, and then transferred to Greater Buffalo, did the transfer in any way involve the desirability to transfer larger runs to Greater Buffalo?

A. I don't think it was that so much as the saving of transportation, wherever the greatest saving of transportation, could be made.

Q. Were runs ever transferred to Greater Buffalo because of the size of the particular run?

A. No, I think it was almost entirely the transportation angle. Sometimes size doesn't make any difference. Sometimes it is the number of plate changes that are involved. Even though a run may be small, they may have a lot of plate changes and we may have the same plates on the press in Wilkes-Barre for some other run and we would save that make-ready. Therefore, it would be cheaper to transfer it to Wilkes-Barre and save manpower. In other words, the saving of manpower would be greater than the saving of transportation if
88 it was done in Buffalo.

Q. Is the equipment, to your knowledge, of Greater Buffalo, better able to take care of any larger runs?

Mr. MOORE: I am going to object to the form of the question.

By Mr. FELDMAN:

Q. A while back you testified as to the type of equipment present at International and I believe you testified that the only place that might have a press equal to press numbers 2022 would be a press or similar equipment belonging to Greater Buffalo, is that correct, sir?

A. That is correct.

Mr. MOORE: I am going to object to the form of that.

Mr. FELDMAN: I asked him whether he so testified.

Mr. MOORE: I think you are mis-stating his testimony about "equal to." He was talking about a similar press. I don't think he said anything about equal.

Mr. FELDMAN: Repeat the question, please.

90 (Whereupon the last question and answer were read back by the reporter.)

Mr. FELDMAN: Is your objection still noted?

Mr. MOORE: Yes. I think the record will show he is not using the word "equally". He was using the word, "similar." We hadn't gotten into the question of equating performance of presses. If we did, I would object.

Mr. FELDMAN: Let the word "equal" be deleted and would the witness please answer with the word "similar," as part of the question?

Mr. MOORE: To that I have no objection.

The WITNESS: Similar only in the fact that they were both five-plate wide presses. The Buffalo press could be far superior in other respects to ball bearings, strength of cylinders, and speed of the press and better motor or something. So, therefore, I wouldn't they were equal, but they were similar insofar as the five-plate wide were concerned.

91 By Mr. FELDMAN:

Q. In regard to the total four-page units presently printed by International, has the number of such four-page units decreased, remained the same, or increased since June 1, 1955?

A. They have decreased.

Q. It has decreased. Do you know how much a decrease that has been?

A. I would say that in June 1, 1955, we were approximately twenty-nine or thirty million four-page sections. We are now running about twenty-seven million four-page sections and the decrease is partly a result of several things. Largely, I would

say, a result of the difference of the size of the sections which reduces the numbers of fours which you produce, also the fact that we lost business to Newport News and to Eastern Color and to Wilmington and to the Chicago Newspapers. The business that Peoria took from us, which Buffalo took from us since 1955, they largely made up by giving us other business to take its place. So that there are three or four reasons why we
92 are producing less now than we were in 1955.

Q. Are there any runs which International presently services which are being printed by Greater Buffalo in part, or a fraction thereof, at various times?

A. I am not sure I understand your question. Are there any runs which International prints which International at times calls upon or asks Greater Buffalo to print for them?

A. I don't recall any.

Q. None that you can recall, sir?

A. No.

Q. Does International do any printing for Greater Buffalo?

A. Yes, sir.

Q. About how many page units are, is that, sir?

A. Between about three and four million, four-page sections.

Q. How long has that been going on, sir?

A. Several years.

Q. Are these runs serviced by International or are they serviced by Greater Buffalo?

A. These runs that they transfer—what do you mean
93 by "servicing?"

Q. To whom does the publisher look?

A. He looks to Greater Buffalo. No publisher looks to us directly for anything because we have no contracts with any publisher unless there should be a delay in a shipment or something, and at the last minute they will call us to see if we can't hurry it up.

Q. I am referring now to the technical matters that might come up. Now, as to these runs, which I believe you stated you point for Greater Buffalo, to whom does the publisher look?

A. To Greater Buffalo.

Q. In the case when runs have been transferred, what happens thereafter? Does the publisher look to International or to the new printer?

A. The publisher looks to King Features Syndicate.

Q. I am talking about technical information.

A. Ninety-nine times out of one hundred, for any kind of information other than late shipments, they go direct to King Features and King Features come to us.

Q. Did there ever come a time when there were complaints about the caliber of the newsprint or ready print?

A. On rare occasions, very, very rare occasions, we might get a complaint about the printing of an ad, but I would say that the results have been excellent and, therefore, we have had no reason for complaint.

Q. Well, has International ever taken up such problems with the publishers directly in the past, at any time?

A. Yes, sir, we have. After the complaint went to King Features, we would go direct to the publisher and I have made it my business over a period of thirty years to contact the publishers with regard to complaints or to ask them how their service was, if they were getting out on time, if they were satisfied with the printing. I did that by calling on the newspapers directly and by writing to them and I considered it as part of my service to King Features.

Q. As part of that service then, you developed a certain relationship with your accounts, is that correct, sir? I mean, the actual publishing accounts?

A. With a few, but I made these trips so seldom—that is, there were so many papers to be covered that I got to know a number of them, but not very well.

Q. When the accounts were transferred from International, were you ever called upon to make such trips?

A. I don't think I have made a trip to a newspaper in four years. I haven't been well for four years and I have ceased making trips.

Q. Do you know if anyone on behalf of International has ever made such a trip after a newspaper account was transferred away from the plant of International?

A. I don't recall any, no, sir.

Q. I believe you testified earlier that International employs people who repair, service and recondition its machinery and equipment, is that correct, sir?

A. Yes, sir.

Q. What was the number you gave of such people who are employed?

A. About eighteen.

Q. Since June 1, 1955, have any personnel of International been used to service or recondition machinery and equipment at plants other than those of International?

A. For the past eight or ten months, some of our men
96 have been in Sylacauga.

Q. When you say "Some of your men," do you mean people presently on the payroll of International?

A. That's right. And then we bill Buffalo and Buffalo pays us.

Q. How many such people have been assigned?

A. Six maintenance men.

Q. Do you know their names offhand?

A. Zardus, Cognine, Bell—this may sound very stupid of me, but I can't remember the other three.

Q. Mr. Hunt. Does that refresh your memory?

A. No.

Q. Mr. Williams?

A. Williams, yes.

Q. Anyone else you can think of?

A. I can't think of the others.

Q. How long have they been at Sylacauga?

A. Around April or May of last year.

Q. What type of work did they do at International prior to their going to Sylacauga?

A. They were on the maintenance staff. When presses broke
97 down or if they had to be rebuilt or replaced cylinders, change folders, they did that sort of work. Some weeks we had a great amount of work for them on regular maintenance work, and other weeks we didn't have so much, and then they worked on this other press, 2022.

Q. Did any of these people, to your knowledge, work on the servicing or reconditioning of press 2022 prior to its being shipped to Sylacauga?

A. I think most of them, at some time or other, did.

Q. Was that a reason in determining that these people to your knowledge, should go to Sylacauga?

A. I think we picked out the one or two that we thought would be best and there was a question, too, of whether we

could pick out the ones whose wives would be willing to go down there.

Q. When you say "we picked out," who made that determination?

A. The foreman.

Q. Did you ask the foreman to make the determination?

A. No, I think it was made—they came to me and asked me if it was all right and others asked the foreman. I don't believe I ever discussed it with him, who was to go or not to go.

Q. Where did the request come from to send people
98 or ask people to go to Sylacauga?

A. From Greater Buffalo.

Q. Who on behalf of Greater Buffalo, made that request?

A. Walter Koessler.

Q. What position does Mr. Walter Koessler hold with Greater Buffalo?

A. He is the president, I believe.

Q. Do you have any idea what the general wage scale is of the repair people who do the type of work that these people perform at International?

A. Something over \$3.00 an hour.—\$3.00, \$3.25, \$3.30, somewhere thereabouts. I don't know exactly.

Q. Since these people have been down at Sylacauga, have they been getting the same wage scale?

A. No, sir.

Q. What wage scale have they been getting?

A. They are getting a premium rate because it is what they call an erecting job, but exactly what the premium is, I don't know.

Q. Who pays that rate?

A. They pay us, or we pay them and Buffalo pays us.

Q. How long have they been there, sir?

A. Probably about since last April or May.

99 Q. Has Greater Buffalo paid you, paid International any money to date for the advances as to salaries made by International?

A. They have paid it all.

Q. Do you know exactly what type of work these people are performing at Sylacauga?

A. That is a very, very complex question which calls for a comprehensive answer.

Q. Well, in a general sort of way, is it repair work, reconditioning work?

A. They are erecting the press, lining up the cylinders, lining up the folders, lining up the reels, grouting the bed plate, adding new drives, putting in the motor, installing a new greasing system, and probably twenty other different things which I can't recall at the moment.

Q. And doing that work in connection with what press?

A. 2022.

Q. Now, Mr. Joe Clinton, is he employed by International?

A. No, he is employed by Dixie Color Printing.

Q. When did he cease being employed?

A. He has been down there since about May, but he left our employ, I think, about the first of this year, because
100 he was supposed to be what you might call a supervisor there, under our direction in case we operated the plant, and also he continued to work for us in that period and we kept in touch with him daily on the telephone about the job, which he had previously done for us, and which required a very considerable amount of skill. The man who took his place was not able to take it over and do the job as well as Joe Clinton.

Q. Well, can I get the date exactly when he left your employ, the specific date, if you know?

A. No, I couldn't.

Q. When would it be around, did you say?

A. What was that?

Q. What date would it be around?

A. I think around the first of the year. I am not sure.

Q. Prior to his leaving the employ of International, did he concern himself with any matters pertaining to Sylacauga?

A. Yes, very considerably.

Q. Did he spend any time down at Sylacauga?

A. Yes, he was there for eight months, from May until
101 the present time.

Q. And was he concerned during that time with the repair or servicing or conditioning of press 2022?

A. Not actually he himself, no. He had to do with the completion of the building, the completion of the stereotype equipment, and general supervision.

Q. And did he hire people who in turn were concerned with the repair and maintenance of press 2022?

A. I think he hired some people directly down there who were not on our payroll. I don't know anything about them. I haven't been there in a year.

Q. As to the people of International who went down to work at Sylacauga, did he supervise them at all?

A. Well, I would say at that time, direct supervision was in the hands of the foreman, Roger Zardus, but Joe Clinton would act as, let's say, the intermediary or the liaison man between Greater Buffalo and Sylacauga, in putting into effect any changes which the Greater Buffalo engineers thought should be made.

Q. In other words, then Mr. Zardus, the foreman, there, did report to Joe Clinton, is that correct?

A. Yes.

102 Q. Now, since these men have been down in Sylacauga, has International hired any people to replace them at all?

A. No, sir.

Q. Has anyone been hired to replace Mr. Joe Clinton?

A. No, sir. Let me answer that question in another way: No one was required to be hired to replace him directly, to do his work. One man who is there now, is doing his work. We had to hire someone on the bottom to give us a little more—

Q. In other words, someone else in the lower echelon, someone was hired to take up the slack, is that correct?

A. Yes.

Q. Since these people have been down there, how many such people have been hired on the lower echelon to take up the slack in the hierarchy?

A. Possibly one.

Q. No more than one?

A. No more than one.

Q. Have any people had to put in overtime in order to take up this slack?

A. It is very hard to ascribe the reasons for overtime
103 in any department. It may be a rush job, maintenance, or a breakdown, and only certain men could do it who might have had the overtime anyhow, but I would say there has been very little overtime directly as a result of the men leaving.

Q. Mr. Gorman, have you received any information since 1956, in regard to any negotiations or contracts relating to the sale of stock of International, to any corporation or person?

Mr. MOORE: I am going to object to the form of the question with the use of the word, "intimation."

Mr. FELDMAN: I said information.

Mr. MOORE: You said information?

Mr. FELDMAN: Yes.

The WITNESS: I don't have any information to that effect.

By Mr. FELDMAN:

Q. Do you have any knowledge?

A. No, sir, I do not.

Q. Do you know whether anyone has received any information?

A. I have no knowledge of anyone receiving any information on that subject.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: I have rather a lengthy cross examination on this, and I would suggest that we break off now and take it up at 2 o'clock. It is 12:30 now.

Mr. FELDMAN: We will adjourn for lunch until 2 o'clock.

(Thereupon the proceedings were adjourned for lunch until 2 o'clock p.m.)

105 AFTERNOON SESSION, 2 O'CLOCK P.M.

JOSEPH J. GORMAN, resumed the stand and testified further as follows:

Mr. FELDMAN: You are the same Mr. Gorman who testified this morning, is that correct?

The WITNESS: Yes, sir.

Mr. FELDMAN: And you realize you are still under oath?

The WITNESS: Yes, sir.

EXAMINATION

By Mr. MOORE:

Q. Now, Mr. Gorman, this press number 2022, where was that purchased from?

A. Baltimore Post.

Q. And at whose direction did you purchase that press?

A. Walter Koessler.

Q. And on whose account was it purchased?

A. On account of Greater Buffalo Press.

Q. And was the press taken to Wilkes-Barre?

A. Yes, sir.

106 Q. On whose direction was it taken to Wilkes-Barre?

A. Walter Koessler.

Q. What were your instructions with respect to the press when it arrived in Wilkes-Barre?

A. He wanted us to erect the press, line it up, and put in the innovations, which he had in mind, which would bring about pre-registering and allow us to use five-plates wide, rather than four or eight cylinders on the press.

Q. Was there ever any intention upon the part of International, to erect that press for operation at Wilkes-Barre?

A. No, sir.

Q. In other words, your job at International was to do the machine work on that press?

A. Yes, sir.

Q. And where did the plates come from?

A. From Buffalo.

Q. And from where in Buffalo?

A. Some from Walter Koessler, but mostly from the Buer Machinery Company, which I believe was ordered to send them down here by Greater Buffalo Press.

Q. And where did the conception of this rebuilding of the press come from?

107 A. From Buffalo.

Q. And where did the parts come from?

A. Mostly the parts came from Buffalo.

Q. Now, when you first set this press up in Wilkes-Barre how was it set up; was it set up in an area where it could be operated?

A. No, it was set up in a small building alongside of the main plant, the main Sheldon plant building, which was formerly used to warehouse parts and unused machinery.

Q. Was there any pit made for the press?

A. There was no pit.

Q. Could that press be operated without a pit?

A. You couldn't operate the press without a motor and the motor would have to go with the pit, and there was not enough room behind the press even if it was operating in that room for rolls nor no room in front for the bundles.

Q. In other words, the setup at Wilkes-Barre on that press was purely and simply to work on it and do the machinery and maintenance and revision work necessary?

108 A. Yes, sir.

Q. Now, do you know whether or not a pit was built for this press at Sylacauga?

A. Yes, sir.

Q. And do you know when that was done?

A. It was built at the same time as the building was erected. We obtained from Buffalo the dimensions that they wanted for the pit, so as to save money in the erection of the building, they did the pit and the whole building at the same time.

Q. And that pit was designed and installed at Sylacauga for the purpose of taking this particular press?

A. For the express purpose of press 2022.

Q. With the exception of a few thousand dollars, which may remain in the balance of the account, has International been paid for all of the work it did on this press?

A. Yes, sir.

Q. Has it been paid for all the parts it supplied to the press?

A. Yes, sir.

Q. And has it been reimbursed for the services rendered by any International personnel to the plant at Sylacauga?

A. That is right.

Q. And these amounts were paid over the years as they were built?

A. Paid over the years.

Q. Now, at Wilkes-Barre, I think you testified that you have the same number of presses now that you had in June 1st, 1955?

A. Yes, sir.

Q. And are you operating five days a week?

A. Yes, sir.

Q. And with three presses?

A. Some presses occasionally go right around the full five days there if they don't run three shifts every day of the five days. Sometimes it is necessary to work a little more than five days.

Q. Well, is your operation today essentially the same as it was in 1955?

A. The efficiency has been greatly improved. Is that what you mean, the way we are operating?

Q. Well, describe what improvements you have had in efficiency?

110 A. The major portion of our labor cost is in the press room and the press room, each press or the average net production per press hour, including time for registering, that is, getting the plate on and fitting it on the press, has been improved by twenty-five percent since 1955.

Q. To what is that improvement attributable?

A. That is due primarily to a pre-registry arrangement which was conceived by Buffalo, put into effect in the Buffalo plant and then after they purchased International Color Printing Company, they told us how to do it. I might add there, that where we would formerly take, say, four hours to put plates on a press and get ready to run, we now do it in an average of two hours or less, so that we would see roughly, two hours in each complete change. That has been a result in the net production increase of about twenty-five percent.

Q. Now, directing your attention just to the Wilkes-Barre plant, how does the volume at the Wilkes-Barre plant compare now with what it was in June of 1955?

A. I would say we are printing three or four million a week, four-page sections more again than in 1955.

111 Q. In other words, at Wilkes-Barre you are printing more today than you did on June 1, 1955?

A. By three or four million.

Q. Now, directing your attention to the period before June 1st, 1955, or as of June 1st, 1955, what was the financial condition of International at that time?

A. We had approximately \$100,000.00 deficit in our working capital, that is, specifically our credit liabilities exceeded our current assets by about \$100,000.00.

Q. And as of December 31st, 1960, what change had taken place in that condition?

A. It had changed to the point where current assets exceeded current liabilities by roughly, \$800,000.

Q. In other words, your net position had changed by \$900,000.00?

A. Yes.

Q. And to what was that change attributable; how did that come about?

A. It was a change largely due to the increase in production and also due to a better ink which we were able to buy
 112 and get greater coverage from the mechanical process and also to the fact that Buffalo had made it possible for us by some cheaper paper from certain mills.

Q. Now, tell us about this ink. What was the change in the ink?

A. Basically, I don't know what the change was, except we got greater coverage and more strength and, therefore, the cost per thousand four-page sections was less by better than a cent.

Q. Well, now, this new ink supplier was cured through Greater Buffalo?

A. Yes.

Q. At their recommendation?

A. Yes.

Q. And when did you make that change?

A. We made it partially in 1955. We increased the proportion in 1956 and I think that in early 1957, or the middle of 1957, we started to get all of the ink from the new people.

Q. And you bought that ink cheaper than you had before?

A. I wouldn't say that the price was cheaper per pound, I don't remember that, but the coverage was greater, which made the cost per thousand less.

113 Q. And what about the quality of the product?

A. I think the quality of the product improved because we have stronger colors.

Q. Now, prior to June 1st, 1955, who owned the stock of International?

A. Well, Ralph R. Gobin and Mrs. Maisey Scofield.

Q. Did you own any stock yourself?

A. No, sir.

Q. They were the sole owners of the business?

A. Yes, sir.

Q. Now, had they made any further investment in the company for the years prior to June 1st, 1955?

A. No, sir.

Q. Had they made any contribution to the working capital of the company?

A. No, sir.

Q. Had you from time to time, discussed with them, the necessity of improving the working capital position?

Mr. FELDMAN: I am going to object to the question at this time on the grounds that what took place prior to 114 June 1st, 1955, is not germane and not material to this inquiry. Let the record note the objection is based on the fact that we are concerned here with business assets of International Color Printing Company from June 1st, 1955, to the present time.

Mr. MOORE: Well, is your statement that what happened prior to June 1st, 1955, is not germane to this case?

Mr. FELDMAN: No, it is not germane to this discovery proceeding.

Mr. MOORE: Well, I will ask him to answer the question anyway. Will the reporter read the question?

(Reporter repeated question as follows:)

"Q. Had you from time to time discussed with them the necessity of improving the working capital position?"

The WITNESS: Yes, sir.

115 Mr. FELDMAN: In that question, what date does that refer to?

Mr. MOORE: Prior to June 1st, 1955.

Mr. FELDMAN: I am going to object again to the question.

Mr. MOORE: You can object to it, but I am going to have the answer anyway.

Mr. FELDMAN: All right. Let him answer the question then.

By Mr. MOORE:

Q. And as a result of those discussions, had they shown any willingness to improve the working capital position of the company?

A. No, sir. On the contrary, one in particular was constantly seeking dividends, rather than putting money back in.

Q. And on June 1st, 1955, was the financial position of the company in a precarious state?

A. Yes, sir.

Q. Now, how long has International been in the business of printing colored comic supplements?

A. Thirty-seven years.

116 Q. And of those thirty-seven years, how long has it been under contract with King to print exclusively for King?

A. Practically all of the thirty-seven years.

Q. Now, when was the last time you or anybody on behalf of International, solicited the printing of color comic supplements?

A. In the year, 1925. Before, we had an arrangement of an exclusive style of soliciting two papers, and obtained them in 1925 and I have not solicited any since.

Q. And during the past thirty years, or up to June 1st, 1955, for 25 years prior to June 1st, 1955, did International ever have a contract with anybody other than King, to print color comic supplements?

A. None except the two papers I mentioned.

Mr. FELDMAN: At this point I wish the record to note that I object to the question as calling for an answer as to efforts which took place prior to June 1st, 1955.

By Mr. MOORE:

117 **Q.** How long did you maintain the contracts directly from International to those two papers you referred to?

A. Not more than a year.

Q. So that can you say from 1926, to June 1st, 1955, that International has never had a contract with anyone, other than King, to print Color comics supplements?

A. That is correct.

Mr. FELDMAN: I object to that question on the same grounds urged in the prior one.

By Mr. MOORE:

Q. And can you say that during that period of time, International has never at any time sought such a contract?

A. Yes, sir.

Q. And can you say whether or not International has ever competed with anybody during that time for the printing of colored comic supplements?

A. No, sir.

Q. It has not?

118 **A.** It has not.

Q. Now, at the time that the stock of International was acquired by Greater Buffalo Press, did International have a contract with King for printing colored comic supplements?

A. We had a carry-over contract with six months notice; in other words, we had what you might call a six months contract.

Q. And that was the only contract you had with anybody for printing?

A. Yes, at that time—well, at any time.

Q. And under the terms of that contract, was King obligated to print any specific runs at International?

Mr. FELDMAN: I object to that question as to form, violation of the Parole Evidence Rule, namely, the terms of that contract.

Mr. MOORE: You may answer.

The WITNESS: Well, will you ask that question again, please?

(Reporter repeated the question as follows:

119 "Q. And under the terms of that contract, was King obligated to print any specific runs at International?"

A. No, sir.

Q. Now, subsequent to June 1st, 1955, was a new contract negotiated with King?

A. It was discussed.

Q. And—

A. It was not renewed.

Q. The contract was not renewed?

A. It was not completed prior to June 1st, 1955.

Q. Well, subsequent to 1955, was there a contract eventually entered into?

A. Yes, two months later. The exact date I don't know.

Q. And was that contract substantially similar to the contract that had preceeded it?

A. Substantially.

Q. And under the terms of that contract, was King obligated to print any specific runs at International?

A. No, sir.

Mr. FELDMAN: I again renew my objection as to any declaration by the deponent as to the terms of a written contract.

By Mr. MOORE:

Q. Now, subsequent to June 1st, 1955, I think you testified that there were certain runs that were formerly printed at International which were no longer printed there?

A. Yes, sir.

Q. And you testified to a rather long list of papers?

A. Yes, sir.

Q. Now, of course, International had no contracts with any of those papers, did they?

A. No, sir.

Q. And the changes that were made in the runs were occasioned to some extent by business that King had lost, were they not?

A. Yes, sir.

Q. In other words, when King lost the business, International lost the run?

A. Yes, sir.

Q. Lost the printing of the run?

121 A. The printing.

Q. Certain of these runs were lost by King to Greater Buffalo, were they not?

A. Yes, sir.

Q. Certain were lost to the Newport News?

A. Yes, sir.

Q. Certain others to Eastern?

A. Yes, one to Eastern.

Q. One to Eastern?

A. Yes.

Q. Some to Star?

A. One to Star.

Q. And certain of the other papers went out of business?

A. Some went out of business.

Q. And certain of the others, the papers undertook to do the work themselves, did they not?

A. We don't know that some of the others undertook to do it.

Q. And you don't know, because it wasn't your function to get that business, was it?

A. No, sir.

122 Q. Prior to the time this press 2022 was shipped to Sylacauga, was there some kind of an accident which affected it?

A. Yes.

Mr. FELDMAN: I object to the form of the question, namely, an accident, that it calls for a conclusion.

By Mr. MOORE:

Q. I will re-phrase the question. Did something happen to it?

A. Yes, the floor settled underneath the press and threw it completely out of line.

Q. Will you describe for us what you mean by throwing it out of line?

A. When a press is set up, it has to be set up with a tolerance of thousandths of an inch, so that the cylinders and folder and so forth will run smoothly. If the press had been set up on a pit built specifically for that purpose, the chances are that nothing would have happened. But it was set up on an old floor which wasn't thick enough and the floor settled and the press settled with it and threw practically everything out of line.

123 Q. Did that require the redoing of a considerable amount of work?

A. A very considerable amount of work would have to be redone after the press went to Sylacauga.

Q. That work was subsequently done at Sylacauga?

A. Yes.

Q. Now, after the press went to Sylacauga, were there other changes made?

A. Well, I haven't been there, but I have known of other changes such as the installation of a greasing arrangement, an automatic greasing arrangement which the press never had, the changing of the drive was put in, a double drive instead of a single drive, and various other changes with which I am not too particularly familiar.

Q. Now, where were those changes directed from, who designed those changes?

A. Walter Koessler, of Greater Buffalo, or the Buerk Machine Shop.

Q. Is Buerk Machine Shop the machine shop that does a lot of work for Greater Buffalo?

A. Yes.

Q. Located on the premises next to Greater Buffalo?

124 A. That is correct.

Q. Now, during the course of your examination, you testified that some runs were transferred to Lufkin with your consent and approval. Now, I ask you whether you had any power to consent or approve to the transfer of any runs?

A. No, sir, I didn't.

Q. Because the business you had was King's business, was it not?

A. That is right.

Q. Now, subsequent to June 1st, 1955, did you at International, print runs for persons other than King Features?

A. Yes, Greater Buffalo.

Q. And I believe you testified that you received from Greater Buffalo, business that was substantially equivalent to the business that had been lost at the time when Peoria closed?

A. About equal.

Q. So that the net result as far as Wilkes-Barre was concerned, volume-wise, it was about equal?

A. That is right.

Q. Of course, prior to June 1st, 1955, and for thirty 125 years prior thereto, International had never done any printing for anybody other than King?

A. That is right.

Q. Now, has Greater Buffalo caused to be removed from International at Wilkes-Barre, any machinery or equipment that has impaired the operation of the Wilkes-Barre plant?

A. No, sir.

Q. And has your maintenance suffered at Wilkes-Barre by reason of the assignment of certain maintenance personnel to do certain work at Sylacauga?

A. That is a pretty hard question to answer. I mean, I couldn't draw a line in black and white and say whether they suffered a little or not. In time, it may. I don't know.

Q. You haven't had any trouble from it?

A. That is right. The fact that we are still running twenty-five percent better than we were in 1955, indicates we didn't have too much trouble.

Mr. MOORE: Can we take about a five minute break and maybe we will finish up here.

Mr. FELDMAN: Yes.

126 (Short recess taken.)

By Mr. MOORE:

Q. Mr. Gorman, at the time that you purchased at the direction of Greater Buffalo, this press 2022 did you have any conceptions of the plans that had been made for transforming it?

A. No, sir.

Q. And when did you first learn what was to be done to it?

A. I saw cylinder lines on the floor of the machine shop up here, that looked a little bit different than anything I had seen before, and Mr. Koessler said, "That is for a 5-plate press they are putting up." That would be the same then for the press they were putting up in Wilkes-Barre. That was about 1956.

Q. Had you ever heard of a press like that before?

A. No, sir.

Q. Had any of the crew that was working on it in Wilkes-Barre, had they had any experience with a press like that before?

A. No, sir.

127 Q. And by whom was this 5-plate press conceived?

A. Either by Buerk or Walter Koessler, but the information came to us from Walter Koessler. I don't know.

Q. This was a wholly new conception in the business, to your knowledge?

A. To the best of my knowledge, yes.

Mr. MOORE: I think you may ask.

Mr. FELDMAN: Do the other counsel here have any questions?

Mr. LONDON: No questions.

Mr. STEVENS: No questions.

By Mr. FELDMAN:

Q. Mr. Gorman, prior to the time you purchased press 2022 at the direction of Mr. Koessler of Greater Buffalo Press, to your knowledge, had International at any time in the past, ever purchased a press on behalf of another printer?

A. No, sir.

Q. Was there any time in the past when International on behalf of another printer, took a press and had the press altered?

128 A. Not that I can recall.

Q. Was there any time in the past that International assigned personnel to work with another printer?

A. No.

Q. At the time that you purchased press 2022, who on behalf of International, actually went out and negotiated for the purchase of the press?

A. Tom Brennan.

Q. Did Tom Brennan report back to you?

A. Yes, sir.

Q. And who had the final word, as far as International was concerned, in regard to the purchase price?

A. No one had the final word at International. I had to consult with Walter Koessler.

Q. What position does Tom Brennan hold in International?

A. Purchasing agent.

Q. And in connection with the negotiation for the purchase of press 2022, did Tom Brennan go and speak to the people at Baltimore?

A. Yes.

Q. And was this during the time that Tom Brennan was being paid by International Color Printing Company?

129 A. Yes, sir.

Q. Has Tom Brennan, since that time, been in the continual employ of the International Printing Company?

A. Yes, sir.

Q. Has he, at any time, taken leave of International Color Printing Company?

A. No, sir.

Q. Was International Printing Company reimbursed for the time spent by Tom Brennan in going down and negotiating for the purchase of the press?

A. No, sir.

Q. How long did that negotiation take?

A. Very brief, a month or two.

Q. And about how many trips did that involve on the part of Tom Brennan?

A. One or two at the most.

Q. Did Mr. Tom Brennan report, at any time, directly to Walter Koessler, or did he always report to you?

A. He reported to me.

Q. Did you, at any time, ever make a trip up here to Buffalo to consult with Walter Koessler with regard to that purchase?

130 A. I don't think I made a specific trip, but I discussed that with him here, but whether I made a specific trip for that, I don't know.

Q. I believed you testified under the examination of Mr. Moore, that at Sylacauga, a pit was built, is that correct, sir?

A. That is correct.

Q. And that pit presently houses, I take it, press 2022?

A. Yes, sir.

Q. Were there any personnel of International Color Printing Company engaged in building or making that pit?

A. No, sir.

Q. Did any personnel at International Color Printing direct, or in any way scheme or conceive of the manner in which that pit was to be built?

A. Mr. Walter Koessler told us that the pit was to be built for 2022 and whether he gave us the drawing for the pit, or whether we got the drawings from Hoag and Company, I am not sure, but I think we must have gotten the drawings from Walter

Koessler for the reason that when the press was
 131 erected in Baltimore, it was erected as a six-deck high press, two tiers, two stacks and, therefore, the new pit would have to form on account of having the lower of the six-deck, to four, and extending the tier, it would have to be a longer pit than originally used in Baltimore. It was our custom always when we needed drawings, to go to Goss or Hoag for any of those presses, which they had originally built.

Q. At that time, did you ever visit Sylacauga and see the pit and the building?

A. Yes, sir.

Q. And this was prior to the shipment of press 2022 or after the press was shipped down there?

A. I never was there since the press was shipped.

Q. In other words, immediately prior to, or prior to the shipment of the press, did you go down and investigate the way the pit looked?

A. Not immediately after. I was there in a year.

Q. Did you see the pit before the press came down?

A. I did see the pit.

Q. Was that one of the purposes you visited them, to look at this particular pit?

132 A. Not to look at that particular pit. It was to see how things were going. In fact, I had only gone on one trip in the last two or three years.

Q. Well, how long did you stay when you made that trip?

A. Overnight.

Q. Now, I believe you testified a little while back that since the acquisition of the stock of International Color Printing, the efficiency of International has increased about twenty-five percent as to the operation of the presses?

A. Yes, the net per hour has been increased by twenty-five percent.

Q. Has that come about because of the ingenuity used by people at International or because of the technical knowledge received from Greater Buffalo?

A. The technical knowledge received from Greater Buffalo.

Q. Now, prior to the acquisition of the stock of International Color Printing Company, did International rely upon the technical know how of any other printer?

A. No, sir.

133 Q. I believe you testified a little while back that as to the four-page units, more four-page units are presently printed at Wilkes-Barre than prior to June 1st, 1955, is that correct?

A. Yes, sir.

Q. Or at least since June 1st, 1955?

A. Yes, sir, by June 1st, 1955.

Q. Now, you mean, if I am correct when I heard some testimony by you, and you correct me if I am wrong, that the total number of four-page units since June, 1955, has been less at Wilkes-Barre than before, is that correct?

A. No, I didn't say that. I said the total number of supplements printed was less. That included Peoria and Wilkes-Barre.

Q. And by supplements—

A. Four-page sections.

Q. Now, I believe you testified a little while back that the assets, money-wise, as to International Color Printing Company, have increased since June 1st, 1955, is that correct, sir?

A. Yes, sir.

134 Q. And has this also come about because of the technical knowledge acquired from Greater Buffalo Press?

A. Largely.

Q. What are the other factors?

A. The other things, as I indicated before, lower cost of ink per thousand and a better price on some newsprint.

Q. With regard to the exchange of technical knowledge, did you exchange with Greater Buffalo Press, cost summary as to work produced per hour, or any other unit of measurement?

A. Yes.

Q. And did they exchange that information with you?

A. Did they give me that information?

Q. Yes, sir.

A. No, sir.

Q. As to their production?

A. No, sir.

135 Q. Now, prior to June 1, 1955 did you exchange such information with any other printer?

A. From time to time over the years I was on very friendly relations with the superintendent up at Waterbury, Connecticut and we talked about mechanical things and he came down to our place and I went up there. Also from time to time I went down to Newport News and they came up to our place and exchanged information.

Q. Was that just general information over a long period of time or was there a regular systematic exchange?

A. No. I just happened to drop in there or they happened to drop in our place.

Q. What is the case with regard to Greater Buffalo, is there a systematic exchange or is it rather sporadic?

A. Sporadic.

Q. And does International generally feel free to call upon Greater Buffalo at the present time?

A. Yes, sir.

Q. In the past has there ever been such relations with any other printer, namely, the one you have with Greater
136 Buffalo, with regard to the exchange of information?

A. Only when I just explained, from time to time we exchange information with Newport News and also one time we exchanged information with Acme in San Bernardino, the superintendent there came to visit us and I went to visit them.

Q. With regard to Acme and with regard to Eastman Color, the printers you just mentioned in Waterbury, did you ever exchange establishing accounts which each company was then servicing?

A. I couldn't do that if I wanted to because I had no control of accounts.

Q. Well, did you ever exchange information?

A. Yes.

Q. Have you ever exchanged such information with Greater Buffalo Press?

A. Exchange accounts?

Q. Exchange knowledge about accounts?

A. No.

Q. With——

A. Since 1955?

Q. Yes, since 1955?

137 A. Yes.

Q. Have you exchanged such information?

A. Yes.

Q. Have you ever exchanged such information with any other printer?

A. No, sir.

Q. Now, in regard to the purchase of ink supplies, has International ever purchased ink from any other printer or through any other printer?

A. No, sir.

Q. And take it or am I correct in your testimony that such purchases have been made from Greater Buffalo, is that correct?

A. Of a chemical process.

Q. That Greater Buffalo has worked out, is that correct?

A. They arranged the chemical process to sell us ink.

Q. Where do the raw materials come from?

A. I haven't the slightest idea.

Q. Where do you purchase the raw materials?

A. It comes to us already prepared.

Q. Who prepared the ink?

138 A. Chemical Process.

Q. Is that the name of a company?

A. Yes.

Q. Does Chemical Process also sell to Greater Buffalo?

A. Yes, sir.

Q. And they also sell to you, is that correct?

A. Yes, sir.

Q. Now, is this a peculiar technical knowledge which Greater Buffalo is able to benefit from and also International?

A. Yes, sir.

Q. Do you know of any other printers that get such technical knowledge or the benefits of such a mixing process?

A. I do not know anything about any ink costs of any other printer or where they buy it or what arrangement they have about using any technical process.

Q. Prior to your getting such technical process or chemical process, did International purchase ink from regular ink suppliers?

A.

139 Q. Yes, sir.

such Did International have continual contacts with

A. Yes, sir. ink suppliers?

Q. Does sir.

suppliers? International presently have such contact with ink

A. Other ink suppliers still drop in to see us, yes.

Q. But you haven't made any purchases recently from them, have you?

A. No, sir.

Q. Now, in regard to runs on newspaper accounts, did Greater Buffalo at any time ever tell you or anyone else at International which account to transfer to Lufkin or any other subsidiary of Greater Buffalo?

A. They transferred, when they took runs, when we transferred them to King Features, any way it was done, runs went from Peoria to Buffalo and later just by running down to Peoria and they did so because it was going to be cheaper and I passed on the word to King.

Q. It was a direction from Greater Buffalo to International to transfer the run, is that correct?

140 A. Yes.

Q. And you had no say in the matter at all, is that correct?

A. I had nothing to do with the runs.

Q. In other words, you just received a direction from someone at Greater Buffalo and you merely carried it out?

A. I notified King Features of the matters and so forth and notices were sent to Lufkin.

Q. When you notified King Features, did you let them know that this was a determination made by Greater Buffalo?

A. Yes, sir.

Q. In regard to the changes of press 2022 at Sylacauga, you know whether these changes have been made by the personnel of International now at Sylacauga?

A. They have been making them over the past eight or nine months. How far they have gone towards, completion, I don't know.

Q. Do you know whether any other technical men outside of the men from International are working in Sylacauga?

141 A. Yes, there is a man who occasionally goes there from here to Buffalo.

Q. But the bulk of the technical personnel presently working in Sylacauga are from International?

A. I don't know who they have there other than ours, other than our men I don't know how many men they have there other than our men. I don't know who the Greater Buffalo men are or what they do or how long they stay. I haven't been

there in a year and I haven't been familiar with anything taking place——

Q. Do you know whether or not people from Greater Buffalo are presently now at Sylacauga?

A. No, I don't.

Q. Do you know whether technical people from any other subsidiary of Greater Buffalo other than International are at Sylacauga?

A. I don't know anything about anything that has taken place at Sylacauga.

Q. Did you ever have any discussions with Joe Clinton as to the time element involved in getting press 2022 ready to function?

A. Yes.

142 Q. When did you have such discussions with him the last time?

A. Probably three months ago.

Q. Did Joe Clinton ever indicate to you in any way that he was relying on the people from International to get such press ready?

A. I knew that he was relying on them.

Q. Did he ever indicate to you how much he was relying upon the people from International?

Mr. MOORE: I object to the form of that, how much.

Q. Let's delete "how much". Did he ever indicate to you that he was relying upon the people from International to get the press ready?

A. Yes.

Q. Now, a little while back you were asked by your counsel about some of the machinery which has left International and I believe you testified that International presently has not suffered any loss because of such transfer, is that correct?

A. That is correct.

143 Q. I believe you also said that what might happen in the future you can't tell at the present time?

Mr. MOORE: I object to that. That isn't what he said. We are talking about maintenance.

Mr. FELDMAN: Let me ask the witness what he said.

Mr. MOORE: I can make an objection, counsel, and I will make my objection on the record and you ask the question.

Mr. FELDMAN: Let the objection be noted.

The WITNESS: Could I have the question again, please?

(The reporter repeated the question as follows:

"Q. I believe you also said that what might happen in the future you can't tell at the present time?")

By Mr. FELDMAN:

Q. Is that your testimony?

A. You have to go back further than that. I don't think that is a complete question.

144 Q. Let me rephrase the question. I believe you testified, and you tell me whether or not I am right, that as far as equipment leaving International, International at the present time has not suffered any damage as far as the efficiency is concerned, their present efficiency?

A. No, that was not the question I answered. One question I answered was has the machinery at Wilkes-Barre suffered any as a result of maintenance men not being there, not erecting of material leaving there, and I said as far as I know, no, it has not, but I couldn't tell you what might happen in the future.

Q. That is what I am getting at.

Mr. MOORE: I will remark again that that was not what your question was.

Mr. FELDMAN: Well, he gave me an answer, counsel.

Mr. MOORE: Well, when you asked the right question, he did.

By Mr. FELDMAN:

Q. As far as the machinery, the present machinery at Wilkes Barre is concerned, is it your testimony then that as far
145 as the future, you cannot presently determine what the affect of the transfer of leaving of maintenance men from International will have upon the maintenance of that equipment?

A. No one in the printing business at any time knows what is going to happen in the future and when it does happen, they don't know whether it is the reason of men not being there or not. Accidents take place and we are very seldom able to account for the reasons.

Q. Now, early today I believe you testified, and correct me if I am wrong, that many of the machinery and equipment that International has has been put together by the ingenuity and skill of people at International and also that equipment was purchased at various times and put together, is that correct?

A. Yes.

Q. Is International at the present time able to purchase in an open market any of the machinery and equipment which

was shipped from Wilkes Barre to either Sylacauga or Greater Buffalo Press?

146 A. From day to day I don't know what is going to be on the market. Tomorrow I might pick up the Editor and Publisher and find there is a lot of equipment for sale. There might not be any for sale for a month or more, so it is hard to tell when it will be on the market. At any rate, we have equipment from Wilkes Barre which can be rebuilt in case we have an expansion.

Q. In regard to the specific equipment which left Wilkes Barre, can International at any given time go out in the market and repurchase or duplicate that equipment?

A. I can't answer that. I don't know what is going to be on the market tomorrow or a month from now or today.

Q. Does the market change from day to day as to what is available?

A. Yes. We can buy nothing but used machinery and we don't know when the newspapers are going to say, "We don't need this any more; you may have it."

Q. Is the availability of such machinery decreasing or increasing?

A. Decreasing because they have ceased making that type 148 of machinery quite a few years ago.

Q. At the time International purchased press 2022 at Baltimore did you know that that press eventually was going to be shipped to Sylacauga?

A. Yes, sir.

Q. And at the time you received directions from Mr. Walter Koessler to purchase that press did he indicate to you at that time that the press was eventually going to be shipped to Sylacauga?

A. Yes, sir.

Q. Now, I believe you stated that International was repaid for the purchase of that press, is that correct?

A. Yes, sir.

Q. When, can you recall now, was International repaid?

A. Three or four months ago.

Q. Was that the entire amount or were payments made over the year?

A. There were payments made over the year.

Q. How soon after the initial amount was laid out, namely, \$32,500, was International repaid?

A. Just repaid recently, within the last three or four
149 months.

Q. What I want to know is was the amount for the entire press and the work put in on the press paid all in one sum in the last few months?

A. Yes, sir.

Q. Or were payments sporadic over the years?

A. For the work on that press, the work was paid within the last couple months.

Q. And that included the original purchase price and also the work on the press?

A. Yes, sir.

Q. When you say "within the last few months" was that since January 1961 or was it before January 1961?

A. I think it was before January 1961.

Q. Can you recall how much before January 1961?

No, I would like your recollection.

A. I can't give it to you.

Q. Then, state you don't know.

A. I don't know.

Q. Do you have any records here which would indicate when payment was made to International for that press?

A. Yes, sir. Payments made to who for that press?

150 Q. To International from Greater Buffalo. Can you give me an answer on that, sir?

A. In January of 1961.

Q. Do you have a more specific date when you say "January"? Is there any given day there?

A. No, it just says January 1961.

Q. Do you recall when that payment was made, or did it come in the normal course of business of International?

A. In January 1961.

Q. No. Did you actually receive the check or mode of payment, or did it come to International in the regular course of business?

A. It came to International in the regular course of business. They were billed and they paid for it.

Q. Now, immediately prior to the purchase of press 2022 was it ever contemplated that International would engage in the operation of a plant at Sylacauga?

A. Yes.

Q. And what is the present arrangement in that regard?

151 A. We are not going to put a press down there now.

Q. Who made that determination?

A. Which determination?

Q. The determination that International would not operate a press at Sylacauga?

A. I think it is quite obvious that there would be no point in putting one down there.

Q. Well, prior to the time that press 2022 was purchased by International was there a determination made that International would put a press down in Sylacauga and would itself operate that press?

A. Prior to the purchase of International by Greater Buffalo Press, International had planned to put three single width presses down there.

Q. I am talking now prior to the purchase of press 2022 in 1955 and immediately prior thereto. Was there a determination made that International was going to operate a press at Sylacauga?

A. No, sir.

Q. When was the determination made that International would not operate a press at Sylacauga?

A. Immediately after the purchase of stock by Greater
152 Buffalo Press.

Q. When would that be, around June 1955?

A. June 25, 1955.

Q. In talking now again about the four-page unit production of International in or about June 1955 there was production or there was printing of color comic supplement at both Peoria and Wilkes Barre, is that correct, sir?

A. Yes, sir.

Q. Can you recall now what the total four-page unit of production was for both plants, namely those located at Wilkes Barre and the one at Peoria?

A. As close as I can recall, about 29,000,000.

Q. Presently what is the production of four-page units of color comic supplements at the Wilkes Barre plants?

A. A maximum of 27,000,000. Some weeks we run a little less than that; some weeks we are down to 25,000,000, but on the average over the past three months I would say about 27,000,000.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: There is one matter I want to discuss
153 and I think I can finish up.

Mr. WEISS: Why don't we take recess.

Mr. MOORE: Can we take a five-minute break?

Mr. FELDMAN: Yes.

(Short recess taken.)

By Mr. MOORE:

Q. Now, Mr. Corman, you testified just a moment ago as to—I think you used the word “plans” that International had for a southern plant, is that right?

A. Yes, sir.

Q. What was the nature of those plans? How far had your plans progressed?

A. We hadn't progressed at all because we, first of all, needed financing or the prospect of financing and the owners didn't have the money and we saw no prospect of getting it from anyone else.

Q. So, as of June 1, 1955 whatever plans International had were completely impracticable for lack of financing, is that right?

154 A. That is correct.

Q. And you had not progressed to the stage of any concrete plans at all?

A. No.

Q. You didn't know whether you were going to get the financing?

A. No, sir.

Q. You didn't?

A. No, sir.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Do any of the gentlemen here have any questions?

Mr. STEVENS: No.

Mr. LONDON: No.

By Mr. FELDMAN:

Q. Isn't it a matter of fact, Mr. Gorman, that on or about or even immediately prior to June 1, 1955 you had reached a determination that a plant would be built at Sylacauga?

A. No, we had no specific plans to do it because we saw no prospect of getting the money.

Q. In regard to obtaining newsprint were any plans
155 materializing?

A. Newsprint was promised to us in the beginning, say, in 1954, but then we were told that because we had no contracts they wouldn't care to sell newsprint to us. They would sell it directly to King Features and then King Features would sell it to us provided we had a plant.

Q. And did King Features or the Hearst Corporation enter into such a contract?

A. Yes, sir.

Q. On June 1, 1955 was such a contract outstanding between the Hearst Corporation and the Coosa River Company?

A. I think it was—I don't know whether it was exactly at that time or before or after, there was a contract, but I don't remember the dates.

Q. At any rate, on June 1, 1955 such a contract had been entered into already, is that correct?

A. That's right.

Q. And was an assignment made or did the Hearst Corporation indicate that the newsprint would be made available to International Color Printing Company?

156 A. If we had a plant.

Q. In other words, if you had a plant, such newsprint would be made available to International Color Printing Company, is that correct, sir?

A. Yes, sir.

Mr. FELDMAN: I have no further questions.

By Mr. MOORE:

Q. But you couldn't have a plant without the money?

A. I had no money.

Q. And you didn't have the money to build the plant?

A. No.

Q. And International Color had no interests at all in whatever arrangement Hearst had made with Coosa River?

A. We had to stay out of it entirely because they would not deal with us directly for newsprint.

Q. And you were not a party to any such contract?

A. No.

Q. What became of the contract you don't know, do you?

A. I don't know whether it is dead for lack of performance or what. I haven't heard anything about it in several
157 years.

Mr. MOORE: That is all.

Mr. FELDMAN: One question, then, Mr. Gorman. In regard to any openings at Sylacauga do you know where the newsprint will come from?

The WITNESS: No, I do not.

Mr. FELDMAN: You have no idea at all?

The WITNESS: No, I don't.

Mr. FELDMAN: I haven't anything further.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Off the record.

(Discussion off the record.)

Mr. FELDMAN: The attorneys for the parties hereto stipulate as follows: Joseph J. Gorman shall complete his deposition by attaching to the transcript and making a part thereof a written statement setting forth the insurance coverage presently placed upon the printing presses and the attachments thereof, including folders and reels, serial type and mechanical equipment, and all other machinery and equipment used or capable of being used in connection with the printing or handling of color comic supplements now in the possession or control of the defendant, International Color Printing Company. Such statement shall also state the name of each insurance company insuring the particular machinery and equipment and the insurance policy number covering same. In addition, the statement, where possible, shall state the schedules annexed to such insurance policies covering the equipment and machinery referred to above.

Is there any objection to that at all?

Mr. MOORE: No. That is all right.

Mr. FELDMAN: It is further stipulated that the deponent, Joseph J. Gorman, may sign the deposition before a notary public in the State of New York or the State of Pennsylvania and that the deponent shall sign the deposition and return same to the reporter hearing this deposition one week after receiving same and return the signed deposition to the reporter for certification and filing.

Anything else?

Mr. MOORE: Nothing else for me.

Mr. STEVENS: Nothing else.

Mr. LONDON: Nothing else.

Mr. FELDMAN: By stipulation of counsel for the parties hereto the deposition of an officer or representative of the

Greater Buffalo Press Incorporated is adjourned until tomorrow at 10:00 A.M. at this place.

[Caption Omitted in Printing]

161 Deposition of WILLIAM HAMMOND taken at 502 U.S. Courthouse, Buffalo, New York, on April 18, 1961.

WILLIAM HAMMOND, having first been duly sworn, was examined and testified as follows:

EXAMINATION

162

By Mr. FELDMAN:

Q. Will you please state your name and address?

A. William Hammond.

Q. Where do you reside?

A. Lakeview, New York.

Q. Is that your whole address?

A. Old Lake Shore Road, Lakeview, New York.

Q. What company, if any, are you associated with?

163 A. The Greater Buffalo Press.

Q. Do you have any position or is there any title to the position you occupy with Greater Buffalo Press?

A. The office of treasurer.

Q. How long have you held that position?

A. Since about 1955 I guess offhand.

Q. Before that time were you also associated with Greater Buffalo Press?

A. Yes, I was.

Q. In what capacity?

A. As assistant treasurer.

Q. How long were you assistant treasurer?

A. From 1946.

Q. Prior to that time were you also with Greater Buffalo Press?

A. In a part time capacity from 1930 to 1946.

Q. What job did you do or fulfill during that period of time?

A. I handled all the accounting procedures and tax matters.

Q. Are you an accountant by profession?

A. Yes. I don't mean that I am a C.P.A., Mr.

164 Feldman.

Q. I understand that. Where do you maintain your office?

A. 302 Grote Street, Buffalo, New York.

Q. Is that the main office of Greater Buffalo Press?

A. It is.

Q. As treasurer of Greater Buffalo Press Incorporated are you familiar with the nature and types of records received, made and kept by Greater Buffalo Press in the regular course of their business?

A. I am.

Q. Have you personally participated, whether in a supervisory capacity or not, in the actual mechanical operation of any machinery and equipment relating to the printing of color comic supplement?

The WITNESS: Would you repeat that please?

(Whereupon the last question was read by the reporter.)

A. No, I have very little relation to the mechanical
165 matters.

Q. Have you at any time participated in the selling of color comic supplements to publishers or to other people who, in turn, sell to publishers?

A. Yes, I have.

Q. When did you so participate?

A. Oh, over quite a number of years I would say, for the past eight or ten years.

Q. What generally have you done in that regard?

A. What have I done?

Q. Yes.

A. Well, I have never with the exception of one or two instances negotiated original contracts with publishers, but I have taken over the servicing of a number of them and called on them from time to time, and subsequent to the initial contracts I have from time to time negotiated any changes in the contracts or price arrangements and things of that nature.

Q. Was that generally concerned with the billing between the two companies?

A. Yes.

Q. Did you make any decisions in that connection or were you merely carrying out the policy that had been laid
166 out by other people in Greater Buffalo Press?

Mr. MOORE: Before you answer that, I just want to interject at this time to call attention for the purposes of the record that the examination is progressing beyond the scope of the order. I am not going to object to it, but I just want to note that.

Mr. FELDMAN: May the record indicate that I am only interested in what his familiarity is with the operations of the company. No questions at this time have been directed to any operations of Greater Buffalo Press beyond the scope of the order.

Will you repeat the question please?

(Whereupon the last question was read by the reporter.)

Mr. MOORE: You may answer.

167 A. Well, as a long time associate of the company and being in a confidential capacity, I had considerable latitude in using my judgment, and when it was necessary to make a decision on my own, I did it.

Q. Now, was that your regular job or was that merely incidental to your job as treasurer?

A. Well, I was also business manager and there are a lot of matters besides accounting procedures that came under my authority, if you want to call it that.

Q. But your main job then is in regard to the accounting procedures, is that correct?

A. Mainly, yes.

Q. Did you come in today with any records from Greater Buffalo Press or a synopsis of any records which you have examined?

A. I have memorandums here that I think you say in lieu of records.

Q. Yes, that is what I am talking about, sir.

A. Yes, I have some memorandums here.

Q. Now, in regard to the records you have before you or any memoranda, do they indicate that any machinery
168 and equipment was shipped from International's plants at either Wilkes Barre or Peoria, Illinois, to Greater Buffalo at anytime since June 1955?

A. Yes.

Q. When was such equipment and machinery shipped?

A. Well, in the instance of machinery that came from our Peoria plant, it was after the closing of that plant, which I think was in 1957, if I can recollect.

Q. It might have been 1958 or aren't you sure?

A. When the Peoria Plant was closed?

Q. Yes, sir. Well, at any rate——

A. I am not sure—1957.

Q. At any rate it was 1957 or 1958, is that correct?

A. Yes. 1957, I think it was. I think it was the end of 1957.
Mr. Feldman.

Q. All right.

A. Yes, these shipments of machinery probably occurred sometime during 1958.

Q. All right. What machinery and equipment was that?

A. Well, actually we made no record of any trans-
 169 fers of machinery from Peoria because mostly it was
 obsolete items that were fully depreciated and we made
 no book entries for that reason. I don't happen to have a record
 of all the individual pieces of machinery that came into Buf-
 falo from Peoria but the International Color Printing Com-
 pany did keep a record of those items of machinery.

Q. Now, what you just told us in regard to the state of the
 machinery, did you personally inspect the machinery or were
 you so informed by other people?

A. I was informed by other people. I didn't inspect the
 machinery.

Q. Can you recall who so informed you at that time?

A. Who what?

Q. Who informed you about the state of the machinery?

A. Oh, I think mostly Jerry Dunbar who was at one time
 manager of the Peoria plant, and Mr. Koesler himself.

Q. You mean Mr. Walter Koesler?

A. Yes, and our mechanical people.

Q. Now, who paid for the transportation from the
 170 Peoria plant to Greater Buffalo?

A. I believe all that machinery was transported in our
 own trailers.

Q. And when you say your own trailers, you mean trailers
 belonging to—

A. Owned by the Greater Buffalo Press, yes, sir.

Q. Do you know or do you have any list of that machinery
 at all?

A. No.

Q. None at all?

A. No.

Q. Have you received any information as to what it con-
 sisted of?

A. Yes. I know in a sort of a way that it consisted mostly of
 some stereo-type equipment.

Q. And do you know how large that equipment was?

A. How large it was?

Q. How large it was; did it take up a whole truck or two
 trucks?

A. Well, I don't recall that, Mr. Feldman, but there were things in there like a melting pot and casting box. There was other stereo-type equipment like tail cutters, shavers,
171 and plate splitters and the ordinary type of machinery that is used in the stereo-type operation.

Q. Do you know whether that equipment represented all the stereo-type equipment of the Peoria plant?

A. I don't remember.

Q. Do you recall or do you know what type of truck or trucks were used in transporting the equipment?

A. Well, at that time we had all GMC tractors and trailer mobile trailers.

Q. And how large are those trucks tonnage-wise?

A. Tonnage-wise they hold about 30,000 pounds. That is the legal limit.

Q. And am I correct that your testimony is that you don't know whether one or two or even more trucks were used?

A. I don't know how many, whether it all came in one or several shipments. I don't know, Mr. Feldman.

Q. Do you know who made the decision to ship such stereo-type equipment from Peoria to Greater Buffalo?

A. I believe it was Mr. Walter Koessler that made
172 that decision.

Q. Do you know where the stereo-type equipment went, to Buffalo or to Dunkirk?

A. I think some of it came into Buffalo and some of it went into the Dunkirk plant, and some of it is still kicking around that has never been used.

Q. And as far as any of the financial statements of Greater Buffalo are concerned, would any such statements be reflecting the receipt of this equipment?

A. No.

Q. Other than that period of time, did Greater Buffalo Press receive any other machinery or equipment from International?

A. Yes, some press parts were shipped from Wilkes Barre to Buffalo.

Q. When did that take place?

A. I think in 1957 and 1958.

Q. Do you have a list or can you enumerate the particular press parts shipped?

A. Yes, specifically according to my knowledge there were four automatic pasters; there were two Sheridan machines as they are called which are stitching and trimming machines used in the bindery operation and those went into our bindery, and there were four Pancoast couples which came originally out of the Baltimore News plant, and there were four additional Pancoast couples that came out of the Journal American plant.

Q. Is that all, sir?

A. That is all.

Q. Prior to that machinery leaving International, who owned the machines or equipment, Greater Buffalo, or International?

A. International purchased the pasters and there were several transactions on that, Mr. Feldman, that I don't have the details of, but initially the initial purchase was around \$20,000 and we agreed to take two and International wanted two for their use, so we paid them the sum of \$10,000 for our half of the original pasters. Then we also paid them——

Q. Excuse me, before going into other equipment, just concerning ourselves with pasters, now, were they purchased new by International?

A. No, they were used.

Q. Do you know where International purchased them?

A. No, I don't, offhand. I would have to look that up.

Q. Did Greater Buffalo receive them immediately after the purchase or did International hold onto them a while?

A. I think we received them immediately after the purchase, Mr. Feldman.

Q. When you say you think, how soon after; was it a period of a month, two months, a year?

A. I don't know that. I know at the time we paid half of the transportation charge——

Q. Now, when——

A. So I assume that we got the two at the same time that they got the two that they wanted.

Q. Now when payment was made, is it your testimony that International laid out the money and then Greater Buffalo reimbursed them, is that correct?

A. Yes.

Q. And this took place again, sir, when?

75 A. I think 1957, around in there.

Q. Now, going into the next equipment you spoke about——

A. The Sheridan machines?

Q. That is right, sir.

A. International acquired those from the Keystone Magazine plant in Wilkes Barre which was defunct and on our order to purchase them and I think some of those were \$32,750 and we reimbursed International Color Printing for them and those Sheridan Machines were shipped into our bindery and they are in use at the present time.

Q. Was this Sheridan machine shipped to Greater Buffalo at the same time that the automatic pasters?

A. Oh, no.

Q. And was it before the shipment of the automatic pasters?

A. After.

Q. After?

A. Yes.

Q. How long after?

176 A. I think those were shipped into our bindery in 1959 sometime.

Q. Now, how long after the purchase was made did Greater Buffalo get the Sheridan machines?

A. Well, they were bought from this Keystone and moved right in there.

Q. When you say——

A. I don't think they were ever in the plant of International Color Printing.

Q. In other words——

A. They were moved right from this Keystone Magazine Plant into our plant, as I remember.

Q. Do you recall who negotiated the purchase of the machine?

A. I am not sure but I think it was either Mr. Gorman or Mr. Brennan.

Q. Now, thereafter you spoke about some other equipment, the Pancoast couples, is that right?

A. That is right.

Q. And when was that shipped to Greater Buffalo?

A. Oh, I haven't got any information on that, Mr. Feldman.

Q. Well, who paid for that?

177 A. International Color.

Q. And was it much like the previous operation; was it like where they went out and purchased it at Greater Buffalo's direction?

A. Yes, I think that at the time this was sort of a—these Pancoast couples were probably acquired at the same time that International acquired the press—

Q. Acquired what?

A. Acquired the press.

Q. What press?

A. Press 2022 from Baltimore.

Q. When did they acquire that, when would that be, sir, what year?

A. Gee, I think that was 1955.

Q. And how much was involved?

A. These were practically junk. I don't know what they paid for it, maybe \$200, \$500 or a thousand dollars, I don't know what they did pay for them. They didn't amount to much anyway.

Q. Are there any records of them available which would reflect what amount Greater Buffalo—

178 A. No. They were no good to International and I think it was thought maybe we might be able to use them and they shipped them up here. They never billed us for them. I don't know what they cost.

Q. Were they first shipped to International or was shipment made direct to Greater Buffalo?

A. I don't know. I can't answer that.

Q. Going to the next equipment you spoke about, what would that be?

A. It would be about the same situation as the other Pancoast couples.

Q. And what year was that, sir?

A. Well, that was later, the ones that were acquired from the Journal American. I couldn't tell you exactly.

Q. Well, you testified that the couples acquired from the Journal American were in 1955 and these couples now would have to be after 1955, would you say?

A. I think so. I think it was after.

Q. You think it was after?

A. Yes. Journal American is another newspaper.

179 Q. Now, 1955, I am talking about the press 2022 that you just spoke about.

A. Yes.

Q. And you referred to these couples being bought at the same time when the press 2022 was purchased?

A. I am not certain of that. I am just assuming that, Mr. Feldman.

Q. But you say that after that there were additional couples purchased and they were approximately of the same value of the previous couples?

A. It is hard for me to answer these questions very specifically, Mr. Feldman, because I have very little to do with the machinery end of our business. These things go on. I am just telling you what I think and you are trying to pin me down to a definite time here. I don't want to—

Mr. MOORE: Well, just answer to the best of your recollection.

A. To the best of my recollection they were purchased some time after the couples were purchased from the Baltimore News and they were about in the same category.

180 They were parts of presses that had no particular value and I think Mr. Brennan acquired those and he had a good idea it might be handy to have them around and some day they might fix them up and rebuild them and might be able to use them in some manner and some of these presses we rebuild, re-design and re-construct. We have a lot of machinery kicking around like that.

Q. Going back to the four classifications of machinery and equipment that you just testified about, do you presently have any records at all at Greater Buffalo which would show the purchase of such equipment by Greater Buffalo?

Mr. MOORE: I am not quite clear on that question. You are referring to the pasters and the Sheridan Machines which he has testified to were reimbursed as well as—

Mr. FELDMAN: I am referring to all the machinery, the four classifications.

181 The WITNESS: Yes, we have a specific bill for the Sheridan Machines in the sum of \$32,750.

By Mr. FELDMAN:

Q. And where was that bill from?

A. From International Color Printing.

Q. And do you know the date that bill has on it?

A. No, I don't. I haven't got the bill with me.

Q. Did you examine that bill before coming here to testify?

A. No.

Q. In other words, you just testified now as to memory, is that correct, as to what happened about that time?

A. I looked up our bookkeeping records on this, Mr. Feldman, and this item appears on our books.

Q. All right, now, what other records do you have?

A. What other records do I have?

Q. That's right. That would show the purchases.

A. Our ledger accounts in our asset accounts. If they were purchased, we recorded the purchase in our asset machinery account.

Q. All right. Now, going back to the automatic pasters, 182 the first item you spoke about, did you get a bill in regard to that purchase from International?

A. Initially we got a bill for \$10,000 which we paid. Then, we later got a bill from them for some five thousand odd dollars—I think it was around fifty-five hundred dollars—for our share of the transportation cost of moving them, and then we later received a bill from them for around \$12,000 which was one-third of the cost of converting six of these pasters. Now, International bought eight of them all together and now that is all they billed us for to date, is around \$27,584, and that is what appears on our records.

Q. Now, going to the last two items, namely the two classifications of couples you spoke about —

A. They are not recorded on our books.

Q. In ther words, you have no written record of that at all, 183 sir?

A. No, International never billed us for those. There was so little involved they just figured it wasn't worthwhile 183 billing us for them.

Q. But at any rate, Greater Buffalo paid International some amount?

A. For the couples?

Q. Yes.

A. No, we never paid them anything for those. The whole 184 four of them wouldn't be worth a thousand dollars, I don't think.

Q. Is there any other machinery and equipment which Greater Buffalo received from International since June 1955?

A. Not that I have any record of.

Q. Do you know whether or not since June 1955 International has serviced, conditioned, or worked upon any machinery for Greater Buffalo which eventually was shipped to Sylacauga?

A. Yes, they worked on a printing press.

Q. What printing press is that, sir?

A. Well, specifically it is referred to as press 2022.

Q. Who presently owns that press, International or Greater Buffalo?

A. Greater Buffalo Press owns it.

184 Q. Where is the press physically located at the present time?

A. In the plant of Dixie Color Printing Company in Sylacauga, Alabama.

Q. Now, when did Greater Buffalo acquire that press?

A. Well, right from the very beginning.

Q. And when was that, sir?

A. The press was bought originally in 1955 at the direction of the Greater Buffalo Press.

Q. Who gave that direction?

A. Mr. Koessler.

Q. That is the president of Greater Buffalo Press?

A. President of Buffalo Greater Press.

Q. And what happened thereafter? Was the press shipped to Greater Buffalo, or was it shipped to International?

A. It was shipped to International at Wilkes Barre.

Q. What happened thereafter as far as you know in regard to that press?

A. Well, from time to time International spent some time on it. Do you want me to go into detail here?

185 Q. No, not detail, just generally what you know took place.

A. Well, certain parts for the press were machined here at the Burk Tool Works under our orders and direction and it was the idea to reconvert and rebuild this press into something that is not manufactured by any printing press manufacturer, what we call a five-plate wide press. Now, the Greater Buffalo Press designed a press and undertook all the engineering and the knowhow from years of experience that a press of that type would be useful to the Greater Buffalo Press. So, the

Greater Buffalo Press had one built to its own specifications and this press was to be rebuilt in accordance with that design and those working drawings and engineering that was furnished by the Greater Buffalo Press.

Q. Now, where did the personnel come from who worked on that press at International?

A. The personnel were machine—were machinists of the International Color Printing Corporation.

Q. Did personnel from Greater Buffalo Press work on that press at all at International?

196 A. Do you mean physically

Q. Yes?

A. No.

Q. Did Greater Buffalo reimburse International for the work and time put in by such personnel of International?

A. That's right. International was reimbursed by Greater Buffalo Press for all the expenditures on the press.

Q. Do you know when Greater Buffalo actually reimbursed International?

A. In January 1961.

Q. Now, is it your testimony that the press was purchased by International in 1955, worked upon thereafter, and payment for the first time was made in January 1961? Is that correct?

A. That's right.

Q. Was this payment made the earlier part of January or the latter part of January?

A. I think it was the latter part of January.

Q. Is there any other equipment that International worked on for Greater Buffalo?

A. Any other equipment that International worked
197 on for Greater Buffalo?

Q. That's right, yes.

A. Do you mean that came into Buffalo?

Q. No, that either went to International to begin with or left Greater Buffalo to International but work was put on the equipment on the behalf of Greater Buffalo?

A. I don't know as I understand what he means.

Q. Let me start from the beginning. Outside of this press
202 was there any other equipment which International purchased for Greater Buffalo and then worked upon the equipment?

A. Not that I know of.

Q. Was there any equipment that you know of which Greater Buffalo, which Greater Buffalo sent directly to International and thereafter work was performed for Greater Buffalo by International?

A. Performed by Greater Buffalo for International?

Q. Well, I will rephrase the question. Do you have a list of any equipment which left Greater Buffalo and went to International?

A. Oh, yes. I didn't bring anything like that along with me though.

188 Q. But you know such equipment did leave?

A. Oh, we had things built here in the Buerk Tool Works here, which plant does most of our machinery work. We would order, oh, maybe six routers. Maybe two or them would be for our Buffalo plant, two of them would be for Dunkirk, and maybe we would have two made for International Color.

Q. Putting that aside for the moment and directing your attention to machinery and equipment which Greater Buffalo went to International and thereafter work was done on such machinery and it was sent back to Greater Buffalo—

A. No.

Q. Or sent to some other subsidiary?

A. They kept it there themselves in their own stereo-type department. They used some of these things that were to our design.

Q. In other words, this was machinery that International—

A. Bought from Greater Buffalo Press.

Q. Yes, I am not interested in that at all.

A. I didn't think you were, so I didn't bring any-
180 thing like that with me.

Q. Is that correct, sir? I am just interested in, and would like to know from you whether there is any other machinery that was sent from Greater Buffalo to International—

A. And then back again?

Q. And then back again?

A. No.

Q. None at all, sir?

A. None that I know of.

Q. Do you know of any machinery that was sent from Greater Buffalo to International and thereafter sent to any other plant or subsidiary of Greater Buffalo?

A. Yes. I think there were a couple of instances like that where we furnished some stereo-type equipment to International and I think there might have been one or two items that were ultimately shipped to Dixie Color in Sylacauga.

Q. Were they shipped originally by Greater Buffalo with the intention of International working upon the same and then reshipping it?

A. No, they were all ready to use, they were completely rebuilt, serviceable. There was no other work required on them when they left here.

Q. Now, were they ultimately shipped from International to Sylacauga then at the direction of Greater Buffalo?

A. Yes.

Q. Who gave that direction, sir?

A. Mr. Koessler.

Q. Can you specify or describe what that equipment was?

A. I don't know. I think probably specifically it might be this double ring cutting machine.

Q. Do you know the value?

A. I think originally that was built by us here. We paid for it, shipped it to International, billed them for it, then it ultimately went to Sylacauga and Sylacauga billed it back to the Greater Buffalo Press. I think that is the way the thing went.

Q. Did International pay for it at all at any time?

A. Did they pay for it?

Q. Yes?

191 A. Yes, I think they paid us for it.

Q. Were they reimbursed, International, when it left International?

A. When it left they were reimbursed, yes.

Q. By whom were they reimbursed?

A. The Greater Buffalo Press.

Q. Are there any records which indicate this, that Greater Buffalo reimbursing International?

A. Oh, sure.

Q. Do you know the amount involved?

A. Well, I have got a list of items here. I haven't totaled it up. Do you mean specifically on these items that went to Wilkes Barre?

Q. That's right.

A. I mean that went to Sylacauga?

Q. Via Wilkes Barre?

A. Well, some of these items, Mr. Feldman, were purchased by International Color but shipped directly to Sylacauga from the source. They were new. They never were in the plant of International Color. International Color just acted as a buying agent, let's say, and they bought these items and paid for them and billed the Greater Buffalo Press. Greater Buffalo Press reimbursed International Color.

Q. I am talking specifically about this one item you mentioned, this box.

A. Double ring cutting machine?

Q. That's right.

A. Yes, Greater Buffalo Press reimbursed International for that.

Q. And that was after International had paid for it, is that right?

A. Yes.

Q. And had paid Greater Buffalo, is that right?

A. That's right, yes.

Q. Do you have any records which show that transaction?

A. I think it is on our books.

Q. What books would that be, sir?

A. Our ledger accounts.

Q. Now, are there any other items which were shipped from Greater Buffalo to International and then thereafter shipped by International to Sylacauga?

A. Nothing that I know of.

193 Q. Now, Mr. Hammond, do you prepare the balance sheets and financial statements of Greater Buffalo Press?

A. No.

Q. Are they prepared under your supervision?

A. That's right.

Q. How many people do you have preparing these?

A. Well, we have six.

Q. Where are they located or where do they maintain their offices?

A. Well, let's see. Four of them in the office of the Greater Buffalo Press at 302 Grote Street.

Q. That is here in Buffalo, sir, is that right?

A. Yes. There is one in the bindery.

Q. Where would that be, sir?

A. And there is one in another corporation we own, and there is another one in a partnership that we have.

Q. The other corporation which you own, where is that, sir?

A. The other corporations?

No. You mentioned just one corporation that you own you said.

194 Mr. MOORE: Well now, I am going to interpose and object here that it is far beyond the scope of this examination. If you want to notice his examination generally, you can interrogate him on these. We are directing ourselves to these rather limited items.

Mr. FELDMAN: All I want to know is in connection with the financial statements of Greater Buffalo and these are the answers he gave me. Maybe we do not understand one another.

Mr. MOORE: Please don't answer. I have no objection to your inquiring who prepares them, but I am going to object to any inquiry at this time into any other corporations or any other partnerships or any other interests. We have interests that have nothing to do with the nature of this inquiry at all and we are not going to respond to interrogation on those subjects.

Mr. FELDMAN: My intention is not to go that far.

195 By Mr. FELDMAN:

Q. Let me start it this way, Mr. Hammond: Who prepares the financial statements and balance sheets of Greater Buffalo Press and I am just talking about Greater Buffalo Press now?

A. Mr. William M. O'Connor.

Q. Does he work under your supervision?

A. Yes, he does.

Q. Is there any other person or individual who prepares or works upon the financial statements or balance sheets of Greater Buffalo Press and no other corporation?

A. Well, we have some bookkeepers that handle billing and accounts payable, accounts receivable. They are girls in the office.

Q. Are they employed by Greater Buffalo Press?

A. Yes.

Q. In other words, outside of this one individual who you just mentioned and yourself and these bookkeepers, generally

no other people prepare the financial statements and balance sheets of Greater Buffalo Press?

A. No other persons, no.

196 Q. In your position as treasurer of Greater Buffalo Press do you receive the financial statements and balance sheets of any of the subsidiaries of Greater Buffalo Press?

A. I receive them all.

Q. Referring to the machinery which you just testified about, namely, purchases which International made on behalf of Greater Buffalo Press, were any such purchases reflected in the balance sheets or annual financial statement of Greater Buffalo Press to your knowledge?

Mr. MOORE: Well, I think you have got to say at what time. I mean if you are talking about after they paid for it, it is one thing.

Mr. FELDMAN: I am talking 1955 to the present time, or at least during the years when these purchases were made that you testified about.

Mr. MOORE: Well, I suppose that to clarify that questions there is no reason for them appearing in the balance sheet of Greater Buffalo until Greater Buffalo has paid for them.

197 By Mr. FELDMAN:

Q. Referring now to the balance sheets and financial statements of Greater Buffalo Press, during the years from 1955 to the present time did these items or machines, or equipment appear in any form in such balance sheets or financial statements after such purchases were paid for by Greater Buffalo Press?

A. Yes.

Q. Referring now to press 2022, how was that listed in the financial sheets or balance sheets of Greater Buffalo Press?

A. That would be in our machinery account.

Q. Did that appear in such balance sheet at any time prior to the time when Greater Buffalo paid for the same, namely, January 1961?

A. It appeared on a balance sheet of December 31, 1960.

Q. Do you know how that appeared in the balance sheet of International on the basis of the balance sheets?

198 A. It appeared on their balance sheet as an account receivable against the Greater Buffalo Press.

Q. Mr. Hammond, I show you a balance sheet of International Color Printing Company bearing the date on the top December 1959 and ask you to examine the first page of the same and particularly the item under "other assets".

Mr. MOORE: Will you mark that for Identification so we know what we are talking about?

Mr. FELDMAN: I will ask that a balance sheet of International Color Printing Company dated December 1959 and bearing the name on the righthand corner J. J. Gorman be marked as Plaintiff's Number 2 for identification.

(Whereupon the balance sheet of International Color Printing Company dated December 1959 was marked plaintiff exhibit number 2 for identification.)

Mr. MOORE: I want to call attention to the fact that the witness testified about a balance sheet of December 31, 199 1960, and you are showing him now a balance sheet of December 31, 1959.

Mr. FELDMAN: That is correct, sir.

By Mr. FELDMAN:

Q. I ask, Mr. Hammond, that you examine Plaintiff Exhibit Number 2 for identification and particularly the item on the first page under "other assets".

A. Yes.

Q. Now, I believe you testified a little while back that press 2022 would appear under the title "accounts" from knowledge you received from International, is that correct?

A. As of December 31, 1960 it appeared as an account receivable.

200 Q. All right. Now, do you know how it appeared on the balance sheet prior to that time?

A. The one you just showed me?

Q. Yes?

A. It appeared under the title of "Other Assets."

Q. Now, referring to the other machinery or equipment which International purchased on behalf of Greater Buffalo, do you know how such items appeared on the balance sheet of International prior to the time that Greater Buffalo reimbursed International?

A. It appears on that particular statement——

Q. I am talking about other items, whether you know or not?

A. I don't know how it appeared on their statement.

Q. Now, prior to the time that Greater Buffalo reimbursed International for press 2022, did any of the financial statements or balance sheets of Greater Buffalo Press indicate that an amount was due International?

A. Prior to what time?

Q. Prior to the time, prior to January, 1961, when Greater Buffalo reimbursed International?

A. Yes, I think they billed us for various other items
201 than this press that appeared on our Accounts Payable.

They billed us for part of this press. I think that appeared on our Accounts Payable prior to January 1, 1961.

Q. In other words, it is your testimony then that it appeared under Accounts Payable, is that correct?

A. On the books of Greater Buffalo Press, yes.

Q. And would that be reflected, as far as you recall, in what type of statement, a balance sheet or financial profit and loss statement?

A. Well, it would be listed—we draw up a monthly list of all our Accounts Payable and that would show on there, under International Color Printing, as an Accounts Payable.

Q. Do you know whether it appeared on any annual statement prepared by Greater Buffalo Press?

A. I am sure it appeared on the statement of December 31st, 1960.

Q. No. I am talking before that time, before the actual reimbursement was made.

A. Specifically this billing for the press?

Q. Yes?

A. I wouldn't know without checking it, Mr. Feldman.
202 Q. In other words, you don't recall at the present time at all?

A. I don't recall, no.

Q. Now, when International purchased press 2022 on behalf of Greater Buffalo, was any note exchanged or any memorandum between the two concerns, indicating that an amount was due International?

A. Other than that they showed it on their statement. You mean, did they bill us for the original \$32,000.00?

Q. No. Did Greater Buffalo give them a memorandum or a statement stating that they are indebted or in some way obligated to pay for this machine, and that the machine had been purchased for Greater Buffalo?

A. No, we don't do things that formally.

Q. In other words, you don't know whether——

A. These were instructions given by Mr. Koessler to buy the machine. It was the intent and purpose from the beginning that it was for the Greater Buffalo Press and there wasn't a contract, drawing on it, or a statement. It was just verbal instructions, "Go and buy the press."

Q. And is this a normal type of operation as far as
203 Greater Buffalo Press is concerned?

A. That is right. Now, I would like to clear this up——

Mr. MOORE: All right. Leave it alone. I will take care of it.

Mr. FELDMAN: Your counsel will examine you after.

The WITNESS: All right.

By Mr. FELDMAN:

Q. All right, now going on to newspaper accounts and runs presently serviced by Greater Buffalo, do you know whether Greater Buffalo Press, since June, 1955, has ever printed for newspapers colored comic supplements which prior to that time, were printed by International?

A. Yes.

Q. Do you have a list or can you recall the names of such runs?

A. I have a list.

Q. All right, will you read your list, sir?

A. Yes. These are the accounts, there are quite a few of them.

Mr. MOORE: Read them slowly and the reporter will
204 take them.

By The WITNESS:

A. Amarillo, Cedar Rapids, Erie Times; Gary, Indiana; Joplin, Missouri; Davenport, Iowa; Lubbock, Texas; Madison, Wisconsin; Rapid City—I don't even know where that is; Peoria, Illinois; Rockford, Illinois; Springfield, Illinois; Springfield, Missouri; Springfield, Ohio; St. Joseph, Missouri; Toledo, Ohio; Youngstown, Ohio; Danville, Illinois; Lewiston, Idaho; Champaign, Illinois; Casper, Wyoming; Colorado Springs—I assume that is in Colorado; Aberdeen, South Dakota; Grand Forks, North Dakota; Great Falls, Montana; Fort Wayne, Indiana;—that is out.

Q. You say out?

A. There was one listed here in error. Cross that off. The Houston Post; Monroe, Louisiana; Topeka, Kansas; Tulsa, Oklahoma; Wichita, Eagle; Wichita Falls; Abilene; Big Spring;

Corpus Christi; Denison; Greenville; Marshall; Paris, Texas; San Angelo; Santa Fe, New Mexico; Tyler, Texas; Austin; Port Arthur; Waco; Hutchinson; Salina; Shreveport, Louisiana.

Q. Now, those were runs which you just enumerated. Now, do you know whether or not Greater Buffalo Press presently prints for those newspaper accounts color comic supplements?

A. Yes.

Q. Are there any which they do not print for at the present time?

A. No.

Q. Mr. Hammond, as an officer of Greater Buffalo Press, have you within the last two years participated in or been consulted as to any negotiations between Greater Buffalo and any other person or corporation relating to the sale, lease or transfer of International Company's stock?

A. No.

Q. Have you received any information that such negotiations ever took place within the last two years by anyone on behalf of Greater Buffalo, in regard to the sale of International stock?

A. Not to my knowledge.

Mr. FELDMAN: Let's take a break.

(Short recess taken.)

206 Mr. FELDMAN: Will the reporter please read back the last question and answer?

(Last question and answer read.)

By Mr. FELDMAN:

Q. Is Mr. Joe Clinton presently on the payroll of Greater Buffalo?

A. No. He is on the payroll of Dixie Color.

Q. Was he ever on the payroll of Greater Buffalo Press?

A. No.

Q. To your knowledge, did Mr. Clinton ever receive any reimbursement or any salary from Greater Buffalo Press?

A. No.

Q. Do you know whether or not International ever received any reimbursement or salary for services rendered by Mr. Joe Clinton?

A. No.

Mr. FELDMAN: I have no further questions at this time.

EXAMINATION

By Mr. MOORE:

207 Q. Now, Mr. Hammonnd, when did you first receive any bills for the Press and the work done on the press from International Color Printing?

A. I think it was in July, 1960.

Q. And then from July, 1960 —

Mr. FELDMAN: Excuse me, are you talking about one particular press now?

Mr. MOORE: Press 2022.

Mr. FELDMAN: All right.

By Mr. MOORE:

Q. And then from July, 1960, did you receive a series of bills?

A. Every month.

Q. And when was the work at Wilkes-Barre on this press, concluded, about?

A. About June, I think, of 1960.

Mr. FELDMAN: June, 1960, is that, sir?

The WITNESS: That is right.

By Mr. MOORE:

208 Q. And thereafter or at or about that time, the press was shipped down to Sylacauga?

A. That is right.

Q. And then for the first time, International billed you for the work done and for the cost of the press?

A. Yes.

Q. And those bills were finally paid in January of this year?

A. That is right.

Q. Now, I notice on plaintiff's Exhibit Number 2 for identification, the balance sheet of International Color Printing, as of January 2nd, 1960, that they have under Fixed Assets, a machinery account, is that correct?

A. That is right.

Q. Totaling approximately one million-three?

A. That is right.

Q. Then they have under the Fixed Assets column, another line, "Other Assets," press 2022, is that right?

A. That is right.

Q. And also under that heading they have an item, "Keystone Magazine Material, \$32,750.00?"

A. That is right.

209 Q. Do you know what that Keystone Magazine Material asset refers to?

A. Yes, they are what we call hole stitching and printing machines that are used in our bindery operation. They have no relation to printing.

Q. Are those the Sheridan machines?

A. The Sheridan machines, that is right.

Q. That you referred to in your testimony earlier?

A. Previously, yes, sir.

Q. And I think you testified that those were sent to your plant?

A. To our bindery.

Q. To your bindery?

A. Yes.

Q. And they were bought by International and you paid International for them?

A. That is right.

Q. Now, these Sheridan machines are not used at all in newspaper color comic supplement printing, are they?

A. Not at all.

Q. And they were never in the International plant, as a matter of fact, were they?

210 A. They were never in there, to my knowledge.

Q. Now, during the course of the time that the work was being performed on this press 2022 at Wilkes-Barre, did Greater Buffalo send parts to Wilkes-Barre for incorporation in that press?

A. Yes.

Q. And did Greater Buffalo pay for those parts themselves?

A. Yes.

Q. And those parts were never billed——

A. Never billed to International.

Q. So that in addition to the reimbursement item that you have paid International, Greater Buffalo had, in addition to that, a substantial investment in the press in the shape of parts that went into it?

A. Yes.

Q. And what about plans and designs, were they sent down there by Greater Buffalo?

A. Yes, all the working drawings were furnished by Greater Buffalo.

Q. And Greater Buffalo Press stood the cost of all those working drawings?

211 A. Oh, yes.

Q. Now, there was some confusion here about a double wing cutting machine that was sent from Wilkes-Barre to Sylacauga. Now, do you recall that transaction, about that?

A. Yes. We had several of them built, I couldn't tell you how many, for our own use and use in our Lufkin plant, and our Dunkirk plant and at the same time we were having these built by Buerk Tool Works, we had this one built for International Color Printing.

Q. And was it shipped to International Color Printing?

A. Yes, it was.

Q. For their own use?

A. For their own use.

Q. Then what happened when it got there? Now, first of all, it was shipped there and did you bill them for it?

A. We billed them for it.

Q. Did they pay the bill?

A. They paid it.

Q. All right, then what happened to the machine?

212 A. They decided they didn't need it, and under directions from Mr. Koessler, it was shipped to Sylacauga.

Q. And since it was shipped to Sylacauga, you then paid them back for it?

A. International billed us and we paid them back.

Q. Now, in addition to the moneys that Greater Buffalo has expended on this press, both directly and through reimbursement of International, what other moneys has Greater Buffalo spent on the Sylacauga plant?

A. Well, up to the present moment, I may be off a little bit, but to make it in round figures, let us say in the neighborhood of \$800,000.00.

Q. And what were those expenditures——

A. Did you say in addition to the press, Jim?

Q. Yes?

A. Oh, in addition to the press, I would say the press and other things that were reimbursed to I.C.P., I would say probably \$600,000.00, so that we have a total investment in the Sylacauga plant at the moment, of about \$800,000.00 total.

Q. And of that investment, \$600,000.00 was spent directly by Greater Buffalo, with no connection at all with International at all?

213

A. It had nothing to do with International, no.

Q. Now, what were those expenditures made for?

A. Well, the largest amount went into the building, I would say around \$400,000.00 went into the building, and a couple hundred thousand was machinery.

Q. Do you know who owns the property at Sylacauga, where the title is?

A. The title of the property is in the name of Greater Buffalo Press.

Q. And when did we take title to that property, or when did Greater Buffalo Press take title to it?

A. I think it was deeded to us in 1956.

Q. Now, this equipment that was shipped from time to time, or the equipment you testified to that came from Peoria, the plant in Peoria, which was shut down, you testified that that does not appear on your books as having any value?

A. No, it doesn't appear on our books.

Q. And at the time, that equipment was acquired, was it considered largely junk?

A. It was largely junk. It was machinery that was obsolete; it was worn out; it had been in service over twenty years and had no value. It was completely written off, fully depreciated, and had no book value.

Q. Now, when any of that equipment is used in the rebuilding of a machine or rebuilding other equipment, at that point the rebuilt machine is then capitalized, is it not?

A. That is the way we do it.

215 Q. So that at that point if the equipment is ever used, it then does appear on the books in the form of a part of a new capital item?

A. What will they do with a piece of machinery, we will send it to a machine shop like Buerk Tool Works, and we will tell them how we want it rebuilt. They will buy the necessary parts, new bearings, motors, wiring, and what have you. They will do certain machine work. They will modify it; they will improve it; they will bring it up to our modern day standards of the type of machinery that we use, and we carry those on as project accounts. When the project is completed, we capitalize the sum total of all of the improvements. Now, just—

Q. That is all I want to know on that. Turning now to a different subject, are you familiar with the criterion or standards used in the newspaper industry for measuring the volume of business in the industry?

A. Yes. It is circulations.

Q. And those circulations figures, do they become a matter of public record?

216 A. Yes, they do.

Q. How are they recorded or where are they recorded?

A. Well, initially there is an organization called the audit bureau of circulations, which audits the circulations of all the newspapers in the country, and those figures are compiled in a publication known "Editor and Publisher".

Q. And those figures are then made available to the public?

A. Anyone who is interested can get a copy of it and the "Editor and Publisher Year Book" is considered the bible of the newspaper publishing industry.

Q. Did you make a study and a computation of the circulation of the various papers for whom Greater Buffalo Press does printing and make a comparison between the year 1954 and the year 1960?

A. I did.

Q. Do you have a computation on that before you?

A. I have got one in my folder here.

Q. Now, in the year 1954 from the records of Greater Buffalo Press and the figures from "Editor and Publisher" 217 what was the annual circulation of the newspapers for whom Greater Buffalo Press printed colored comic supplements?

A. Circulation figures you want?

Q. Circulation figures.

A. 8,993,170.

Q. What was the total circulation figure that year of all newspapers which carried colored comic supplements?

A. 46,331,370.

Q. What percentage of the circulation, total circulation of newspapers carrying color comic supplements was printed by Greater Buffalo Press?

A. Ninety and forty one hundredths percent.

Q. Now, during the same year, what was the circulation of the newspapers for whom King Features had contracts for the printing of colored comic supplements?

A. Twenty-three and thirty one hundredths percent. That was the percentage of total circulation.

Q. What was the amount of circulation?

A. The amount was 10,799,474.

218 Q. Now, will you give the same computation for N.E.A.?

A. N.E.A. percentage-wise was 4.28 and circulation-wise it was 1,983,746.

Q. What was the percentage held by other printers of colored comic supplements?

A. Nine and seven one hundredths percent, total circulation of 4,203,656.

Q. And what percentage of colored comic supplements were printed in the newspaper plants? By that I mean the plants—

A. Private plants? Private plants of newspapers?

Q. Private Plants of newspapers?

A. Forty three and ninety three one hundredths percent.

Q. And the circulation of those papers?

A. Was 20,351,324.

Q. So, if you use the circulation figures in the year 1954, Greater Buffalo Press had 19.41 of the market, is that right?

A. That's right.

Q. Did you make the same computation for the year 1960?

A. I did.

219 Q. Give us the circulation and the percentage of Greater Buffalo Press?

A. Greater Buffalo Press held twenty six and twenty eight one hundredths percent, a total circulation of 12,453,371.

Q. King?

A. Twenty and ninety-six one hundredths percent, a total circulation of 9,929,613.

Q. N. E. A.?

A. Four and seventy-eight one hundredths percent, 2,264,651.

Q. Other printers of colored comic supplements?

A. Eleven and forty-seven one hundredths percent, 5,433,786.

Q. And—

A. Private plants of newspapers?

Q. Private plants of newspapers.

A. Thirty-six and fifty one hundredths percent, 17,300,660.

Q. What was the total circulation for 1960?

A. 47,382,081.

220 Q. Now, did you compute the percentage gain enjoyed by Greater Buffalo Press from the year 1954 to 1960?

A. Yes, I did.

Q. What was that percentage gain?

A. The percentage gain was six and eighty-seven hundredths percent.

Q. What was the gain circulation-wise?

A. 3,460,201.

Q. What about King?

A. King had a loss of two and thirty-five hundredths percent.

Q. What circulation?

A. A circulation of 869,861.

Q. And N. E. A.?

A. Had a plus of a half of one percent, point five zero percent.

Q. Gain in circulation?

A. 280,905.

Q. Other printers of colored comic supplements?

A. There was a gain there of two and forty hundredths percent, a circulation of 1,230,130.

Q. And the newspaper plants printing their own supplements?

221 A. There was a loss of seven and forty-two hundredths percent, involving 3,050,664.

Q. Now, did you make a computation as to the source of the increase of Greater Buffalo Press business from 1954 to 1960?

A. Yes, I did.

Q. Will you tell us where that increase came from?

A. Well, Greater Buffalo Press gained a net of twelve accounts from King Features, totaling a circulation of 603,498.

Q. Did they gain any accounts from N. E. A.?

A. Yes.

Q. What was that?

A. 529,820, the two accounts.

Q. We gained two accounts from N. E. A. and lost two, didn't we?

A. That's right. So, in numbers of papers we wound out even, but we came out on top on the circulation.

Q. And King, we took thirteen accounts?

A. And lost one to them.

Q. Lost one, so we had a net gain on King of twelve?

222 A. That's right.

Q. What about other plants?

A. Other plants?

Q. These are other colored comic supplement printers.

A. There were eight jobs involving 221,082 in circulation.

Q. What about runs that we acquired that had formerly been printed by the newspaper plants themselves?

A. We acquired eight new jobs, or seven with a total circulation of 1,826,684.

Q. Now, at the time we acquired those jobs the work was being performed by the newspaper publisher himself?

A. That's right.

Q. Those jobs were not acquired from any other printer?

A. They were not acquired from any other printer.

Q. Or any other syndicate?

A. Or from any other syndicate.

Q. Then, did we gain circulation or gain in production because of any circulation increases?

223 A. Well, there are two new publications that never had a Sunday comic supplement before.

Q. And what did we gain on that?

A. We gained two jobs, a total circulation of 318,514, that was never in any other commercial plant.

Q. Now, were some papers discontinued?

A. Yes. We gained a sum in our normal circulation increases.

Do you want that figure, Mr. Moore?

Q. Yes.

A. From the existing newspaper accounts that we had been printing for right along the gain was 266,532 in circulations, and to answer your last question, there were two newspapers that were discontinued involving a loss in circulation of 305,930.

Q. So, of the 6.8 gain in volume enjoyed by Greater Buffalo from 1954 to 1960, 1,826,000 was from newspapers that had previously printed their own supplements?

A. That's right.

Q. And 318,000 some odd were from newspapers that hadn't had any supplements?

224 A. That's right.

Q. And only 221,000 was from other competitive colored comic supplement printers excluding King and N. E. A.?

A. Excluding King and N. E. A., yes. Do you want this figure, Jim? I think that is an interesting one.

Q. Now, the analysis of the business of Greater Buffalo Press as of December 31, 1960 discloses how many papers? How many papers did we print for?

A. 79, total circulation of 12,453,370.

Q. Where did we get that business from, or who had that business previously?

A. Previously fifty-one of those newspapers, representing a total of 9,459,936 in circulation and representing seventy-five and ninety-seven one hundredths percent of our business, came from private plants and new publications that were never previously printed by a commercial comic printer or any syndicate.

Q. And where did the other twenty-eight come from?

A. The twenty-eight came from King, N. E. A. and
225 other plants, representing 2,993,434 in circulation and twenty-four and three one hundredths percent of our total volume of business.

Q. Now, calling to your attention page 3 and 4 of the affidavit of Raymond M. Carlson in support of the order to show cause, have you read this analysis in this affidavit?

A. Yes, I have.

Q. The affidavit states, "These surveys have been characterized as the only available accurate summary of colored comic supplements printed during the specific years." Do you agree with that statement?

A. I do not.

Q. Will you point out wherein that statement does not conform to the practice of the industry?

A. This survey or these surveys that are shown here in Mr. Carlson's affidavit were prepared by Joseph J. Gorman and the method he used was sending in inquiries to all the newspapers throughout the country and asking for replies as to their circulation and where their jobs were being printed. He
226 converts that into—where this is not a criterion in where it is unreliable in the area of arriving at these figures which he converts into terms of four-page units. That is a highly flexible, very unreliable, and it is fraught with nothing but guess work.

Q. Well, for what reason?

A. For the reason that newspapers constantly change the number of pages in their supplements and no one would be able to—I am sure that this survey didn't encompass a report from any of these newspapers as to what number of times they printed an 8-page supplement, a 10-page, a 12-page, a 14-page, a 16-page, an 18-page or what have you. So that he can only guess. When he got the circulation figure he could only guess what size sections they were printing and then by some gymnastics convert that into four-page units. Now, I am sure that there was an awful lot of guess work involved in that procedure.

Q. Turning to another subject, I call your attention
227 to the top of page 3 of Mr. Carlson's affidavit, the first sentence that approximately 14 percent of the total number of these newspapers distributing color comic supplements with their Saturday and Sunday additions printed such supplements themselves? Did you make an analysis of that figure?

A. I think what he is referring to there is the number of newspapers.

Q. In other words, he is referring to the number of newspapers?

A. Rather than the circulation of newspapers.

228 Q. In other words, he is referring to the number of newspapers.

A. The circulation of newspapers.

Q. And, of course, the number of newspapers at Rocky Mountain—

A. Well, for instance here, you take in 1960, N.E.A. had 119 newspapers out of a total of 552—no, 131—wait a minute—119 out of 552. It only represented twenty-one percent of the market in number—it represented twenty-one percent of the market in the number of publications. But in terms of circulation, it represented only 4.78 percent, so you can see how cockeyed that is.

Q. In other words, if you take a percentage of the number of newspapers to make a comparison, you are giving—

A. A different percentage figure.

Q. The same weight to LaCross, Wisconsin?

A. All the little guys don't mean anything, you throw them in one pot and you couldn't run a printing plant with the whole

bunch of them. There is one other thing here, in this 86 percent figure, he throws into our pot, that doesn't belong to us.

229 Q. Will you explain?

A. Now, International Color Print owns no contracts and when we acquired International Color Print, we acquired no printing contracts.

Q. Those contracts were King's contracts?

A. They were King's contracts and not ours. International never had them and we never acquired them as the result of acquiring International Color.

Q. So in arriving at 86 percent, he includes——

A. He includes something not ours.

Q. In Greater Buffalo, contracts that were not King's?

A. That is right.

Q. Turning now to a different subject, are you familiar with the basis on which Greater Buffalo sells its printing?

A. Yes.

Q. And will you explain to us first of all, are all of its prices to all of its customers, arrived at pursuant to the same formula?

A. We have a standard basic formula.

Q. And what is that formula predicated on?

A. Well, to start with, you have in the trade, what is known as make ready cost. Now, that is the cost of preparing a job through all its stages up to the point of actually starting printing it on the press, mainly, its stereotyping operations. Now, regardless of the number of copies involved, on a given job, the make ready cost on a given size section, eight pages, ten pages and so forth, remains constant, so that if you had a newspaper with a circulation of 100,000 and they were buying an eight-page standard, the cost of preparing that job for printing would be \$2.32, under our pricing formula. Now, obviously, if the newspaper only had a circulation of 50,000, that cost would be in terms of per thousand—let me retract that just a minute there—in terms of a newspaper with 100,000, we were first of all, speaking about that make ready cost per thousand, which would reflect as a cost \$2.32 per thousand.

Q. All right, do you have a cost for paper, too, in the formula?

A. Yes. On an eight-page standard, the paper content and our price would be \$6.62.

Q. Per thousand?

231 A. Per thousand.

Q. And do you have a cost for ink?

A. The cost for ink on that size section would be 88 cents.

Q. And do you have a press cost?

A. Yes.

Q. What is that?

A. The press cost on that size section would be \$2.32.

Q. What does that cost encompass?

A. That is just the printing operation.

Q. That is the labor printing?

A. The labor printing on the press.

Q. Then do you have a handling cost?

A. We have a handling cost. We designate it as wrapping and shipping and on that size section, that cost us 34 cents.

Q. So that when you total up these figures on an eight-page standard section —

A. Of a circulation of 100,000.

Q. You get a figure —

A. The first thousand would be sold at the rate of \$12.48 per thousand.

Q. Now, is there —

232 A. As the run goes up above 100,000, we delete the initial make ready cost of \$2.32 and we sell all the additional thousands at \$10.16 per thousand.

Q. Now, these prices are the standard prices given to anybody who wants to purchase printing from Greater Buffalo Press?

A. We will even sell you some at that price.

Q. And is that the price you charge syndicates?

A. Syndicates.

Q. Newspapers?

A. Newspapers.

Q. Other printers?

A. Other printers.

Q. Well now, how does the formula vary if you have a 50,000 circulation?

A. Well, on the first 50,000, the planning and make ready cost job obviously would become \$4.64.

Q. That is the only difference?

A. And then you would get a total price on the first 50,000 of \$14.80, and then you would take off \$4.64, and you would come back to the basis of \$10.16 for all the additional thousands over fifty.

Q. And that is the only variation in volume?

233 A. That is the only variation in volume.

Q. Now, do you have contracts, enter into contracts, when you take on a printing job?

A. Initially, in most instances, we do, yes.

Q. And are those contracts subject to cancellation?

A. They are.

Q. And on how many days notice?

A. Sixty days.

Q. And is substantially all of the business that you now have, subject to sixty day cancellation?

A. Yes, it is.

Q. Now, do you have some variables in the contracts with respect to labor and paper cost?

A. I don't know as I understand you.

Q. Well, if there is an increase in the cost of newsprint?

A. Oh, Yes.

Q. Is there a provision in the contract that the cost of printing escalates?

A. There is a provision in all our contracts that provides for an automatic increase to cover the exact cost of the paper increase.

Q. And when newsprint increases, that paper item of
234 your job increases?

A. Yes.

Q. Now, do you have a similar provision as to labor increases?

A. Yes, we do.

Q. And over the past ten years, have you had innumerable labor increases?

A. Every year.

Q. And over the past ten years, have those increases in labor been passed on to your customers each year?

A. No.

Q. How many times has it been passed on?

A. Three times.

Q. And when were those increases passed on?

A. In 1952—can I qualify that a little bit?

Q. Go ahead.

A. In 1952 we made an increase to cover our increased cost of labor and in the same year, we converted our machinery to

reduce the size of the comics and reduced the amount of paper required to print these comic sections. In other words, at that time, we were using sixty-inch rolls. We spent a great

235 sum of money—could I mention that?

Q. Just say what you want.

A. Well, I think probably a couple of hundred thousand dollars that we spent to convert our machinery to 58-inch rolls and we passed the savings on to the newspapers in a form of a decrease in the price to cover the saving of newsprint, so that in 1952, the net result to us was just about a stand-off.

Q. Then, you had another increase in 1956?

A. In 1956 we had an increase.

Q. And that increase took into account solely increases in labor?

A. Solely increases in labor, yes.

Q. And what about 1958?

A. 1958 we also made an increase to cover the increased cost of labor for that particular year.

Q. Now, did those increases cover your entire increases in your cost of labor up to 1958?

A. Oh, no.

Q. In other words, the 1956 and 1958 increases were predicated just on that year?

A. Yes.

Q. And have you had increases in labor since 1958?

236 A. Yes, we have.

Q. And have you changed your prices to reflect those?

A. No.

Q. Now, beginning in 1950 and up to the present time, what has been your increase in your labor cost?

A. Well, labor cost at that time in 1950, was \$2.73 per hour.

Q. What is it today?

A. \$4.22.

Q. And what is the percentage increase?

A. The percentage increase is 54.6 percent. The dollar increase was \$1.49.

Q. And how much of that have you absorbed?

A. We have absorbed \$1.12 out of \$1.49, and passed on 37 cents in increased prices.

Q. To your customers?

A. To our customers.

Q. So you absorbed about 75 percent?

A. We absorbed about 75 percent and passed on about 25 percent.

Q. Now, have you made a computation showing the cost of services rendered by Greater Buffalo to its customers in the year, 1960, compared to their cost to their customers in the year, 1940, taking into account the relative purchasing power of the dollar in 1940, and the purchasing power of the dollar in 1960?

A. Well, we used the measure there of the years, 1947 to 1949, rather than 1940.

Q. All right.

A. The purchasing power of the dollar then was rated at 100.

Q. Those are from Department of Commerce figures?

A. Those are from the statistical abstracts of the United States for 1960, United States Department of Commerce, Bureau of Labor Statistics, Table Number 432 on page 331.

Q. All right. Now, what was the result of that comparison? Just give us the—

A. Well, the comparison there, the 1960 dollar in terms of the 1940 dollars, is 42.7 percent. Oh, I might say here, the year 1940, in relation to 1947-1949, was 195.7 percent; the period, 1947-1949 was rated at a hundred, and the year 1960 was rated at 83.7 percent of that basic dollar, so that the 1960 dollar in terms of 1940 dollars, was 42.7 of the 1940 dollar.

Q. Now, your prices for the year 1940, average what?

A. \$3.19 a thousand.

Q. What do they average in 1960?

A. \$4.98.

Q. And adjusting this to the differential in the purchasing price of the dollar, what would be the respective prices in 1940 and 1960?

A. Well, it would be \$2.13.

Q. For the year 1940?

A. For the year 1940, \$3.19.

Q. And for the year 1960?

A. \$2.13.

Q. So that if you take into account the purchasing power of the dollar, your prices are—

A. \$1.06 less than they were in 1940.

Q. Approximately one-third less?

A. Thirty-three and two-tenths per cent.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Before we recess, may I look at this tabulation?

Mr. MOORE: Oh, sure, you sure may. I will mark it.

239 Mr. FELDMAN: Will you please mark it?

(Tabulation marked defendant's Exhibit A for identification.)

By Mr. MOORE:

Q. I show you defendant's Exhibit A for identification and ask you if that is the summary of the computation you made from the records of Editors and Publishers?

A. It is.

Q. And the records of the Greater Buffalo Press?

A. It is.

By Mr. FELDMAN:

Q. Referring now to defendant's Exhibit A and to the computations, and summary appearing thereon, what source did you use? Will you repeat that?

A. I used the Yearbook of Editors and Publishers for those respective years.

Q. Is that all you used? Anything else?

A. I used our own records of where these jobs were printed.

Q. When you say records, you mean Greater Buffalo
240 records?

A. Greater Buffalo, International Color.

Q. Any other company?

A. Yes, what our knowledge was of where these other jobs were being printed and we have knowledge of the jobs that are being printed in private plants.

Q. When you say knowledge, how did you acquire such knowledge; was it on paper; did you talk to people?

A. No.

Q. I mean, this is just general knowledge you acquired during the years, is that correct?

A. Yes.

Q. So, in other words, there were three sources you speak about; one, Editors and Publishers Yearbook, record of Greater Buffalo and International, and general knowledge you acquired through the years?

A. Yes.

Q. Is that knowledge you, yourself, acquired, or did you rely upon the knowledge that others at Greater Buffalo acquired?

A. I had some assistance on this. One of our men in our office and also Jack Koessler and I consulted with Joe
 241 Gorman as to some of these sources where some of these jobs were being printed from common knowledge that everybody knows; there are no secrets about where these jobs are being printed.

Q. Were there any other sources you relied upon?

A. No.

Q. Did you consult the records of any of the other subsidiaries or any other affiliates of Greater Buffalo, outside of International?

A. Yes, I did.

Q. Which ones were they?

A. They are all in our office, Mr. Feldman.

Q. Which ones are they? I just want to know which ones you looked at.

A. Well, the jobs are printed on our run sheets at Dunkirk, at the Dunkirk plant and the Lufkin, Texas plant.

Q. Any other records or sheets you looked at from any other—

A. Yes, jobs that were being printed, record run sheets of International Color Printing.

Q. Any other ones?

A. No, that is all.

242 Q. So, just to review this, you used the Yearbook of the Editors and Publishers, is that correct?

A. Yes.

Q. You used the records relating to runs of newspaper accounts of International Color Printing Company, is that right?

A. Yes.

Q. Also, Southwest Color Printing Corporation?

A. Yes.

Q. Greater Buffalo Press, Incorporated?

A. Yes.

Q. And then you had discussions with Jack Koessler and Joseph Gorman?

A. And Robert Doyle, who is in our office, who is familiar with it.

Q. What position does he hold with Greater Buffalo?

A. He is our newsprint supervisor, supervising most of the billing operations.

Q. In the preparation of this summary, did you consult with any publishers at all, directly?

A. No.

Mr. FELDMAN: I would like to take a recess until this afternoon, at this point. Suppose we get back about 2:30.

243 Mr. MOORE: Yes.

(Thereupon, at 12:20 p.m., a recess was taken until 2:30 p.m.)

244 (AFTERNOON SESSION, 2:30 P.M.)

Mr. FELDMAN: For the purpose of the record, I would like to make this statement: That the plaintiff pursuant to Rule 32 of the Federal Rules of Civil Practice, serves notice that it objects to all questions posed to the witness on cross examination by counsel as to the applicable market relating to the sale of color comic supplements and as to all questions based upon defendant's Exhibit A for identification, which was marked as a defendant's exhibit prior to the lunch recess. Plaintiff also serves notice it objects to all questions asked of the witness as to the method used in pricing color comic supplements by Greater Buffalo Press.

These objections are based upon the fact that such lines of questions are not relevant nor material to the five specific matters set forth in the Order to Show Cause, dated
245 April 3, 1961, on page 4.

Mr. MOORE: I would reply to that that, first of all, these objections are not timely. They should have been made at the time the evidence was adduced. Secondly, that the matters inquired into are distinctly relevant to the subject matter of the Order to Show Cause, in that they directly contradict allegations and affidavits upon which the Order to Show Cause was obtained.

WILLIAM HAMMOND, having been previously sworn, was recalled and resumed his testimony as follows:

By Mr. FELDMAN:

Q. Prior to the recess, Mr. Hammond, I believe you testified—

246 Mr. MOORE: Let me just interject here. Are you now going to cross examine him on these matters?

Mr. FELDMAN: On some of the matters, yes.

Mr. MOORE: Then I am going to claim that you then waive whatever objection you made.

Mr. FELDMAN: Let the record indicate that the plaintiff does not maintain that it has waived any rights under Rule 32-c of the Rules of Civil Practice, since any objections as to relevancy and materiality are not waived even though objections may not be made at the time of the deposition.

Mr. MOORE: Well, I certainly would concede your right to reserve those rulings, but as far as an objection of this deposition going into the scope of the matters examined into, then I would take the position that if you cross examine on it, you waive it.

Mr. FELDMAN: I maintain otherwise. Let the record
247 indicate the views set forth by both counsel.

By Mr. FELDMAN:

Q. Mr. Hammond, prior to the lunch recess, do you recall testifying at length in regard to data you set forth or compiled for the defendant's Exhibit A for identification?

A. Yes.

Q. Mr. Hammond, I believe you stated that one of the source materials you used in compiling defendant's Exhibit A for identification, was data obtained from "Editors and Publishers Yearbook," is that correct, sir?

A. That is correct.

Q. Now, in regard to the information you obtained from "Editors and Publishers Yearbook," did you obtain any data from "Editors and Publishers Yearbook," as to the newspapers throughout the country who sell color comic supplements?

A. Who sell color—

Q. Color comic supplements?

A. Did I obtain any information? I didn't get that.

248 Mr. FELDMAN: I will re-phrase the question.

Mr. MOORE: Let me see if I can clarify it. I think what he is inquiring into is who furnished color comic supplements with the papers they sell.

Mr. FELDMAN: That is what I mean.

By Mr. FELDMAN:

Q. Did you obtain such information?

A. Yes. That is indicated in "Editors and Publishers Yearbook."

Q. What is indicated in it?

A. As publishing a Sunday section.

Q. Does it indicate whether or not color comic supplements are sold by any newspapers?

A. No, not in every instance, no.

Q. Does it indicate it in any instance at all?

A. I don't know.

Q. Isn't it a fact, Mr. Hammond, that "Editor and Publisher" sets forth the circulation of newspapers throughout the United States?

A. And it indicates whether they publish a Sunday—

249 Q. Edition?

A. Edition.

Q. Isn't it a fact also that newspapers throughout the country, at least some of them, do not sell a color comic supplement with their Sunday editions?

A. That is correct.

Q. Isn't it a fact also that some newspapers which are published on Saturday, do not sell a Saturday color comic supplement with said sales?

A. That is correct.

Q. Well, what specifically do you recall "Editor and Publisher," setting forth, with regard to the information you used in compiling defendant's Exhibit A for identification?

A. Well, in every instance where it was indicated in "Editor and Publisher," that they published a comic supplement—I mean, a Sunday newspaper, in those instances where we knew and I knew from knowledge, information and records, that they also published a comic supplement. There were some instances in there where I didn't know whether they published Sunday comic supplements or not.

Q. But at no place in "Editor and Publisher"—

250 A. It is not a matter of record in there whether they publish Sunday comic supplements, no.

Q. Isn't it a fact that all they set forth there are the circulations?

A. The circulation and whether they publish morning, evening, Sunday or Saturday, or what have you.

Q. And that is all that is set forth there?

A. That is all that is set forth there.

Q. In regard to the total number of newspapers in the United States which sell color comic supplements with their Saturday or Sunday editions, outside of contacting the newspapers

themselves, what other methods are available to ascertain whether a newspaper sells a color comic supplement?

Mr. MOORE: I am going to object to the form of the question. It calls for a conclusion. I will allow the witness to answer. It is obviously speculative, what other methods. I suppose that you could hire detectives to go out and do it, but I don't care if he answers it or not.

The WITNESS: Do you want me to answer?

251 Mr. FELDMAN: Yes.

By the WITNESS:

A. What other methods are there of ascertaining of whether they publish a comic supplement or not?

Q. That's right. Based upon your experience.

A. Well, the methods that I used, were our own records in many instances and I think out of this total of 500 here, we had access to information on 52 in our own instance, 145 of King Features and 61 of N.E.A., and those that are printed in our plants, we know that from knowledge. Now, in the instance of the newspapers that we have categorically shown as other plants, that is based on information that is common knowledge in the industry.

Q. All right. Now, would such common knowledge be as accurate as communicating directly with all newspapers throughout the country?

Mr. MOORE: To that, I object. It calls for a conclusion.

Mr. FELDMAN: The witness has testified he is an expert.

252 Mr. MOORE: I am objecting to the form of your question. It calls for a conclusion. I am required to object under the rules. I am going to move to exclude it, which I will.

Mr. FELDMAN: May I have the question?

(Whereupon the last question was read by the reporter.)

Mr. MOORE: I am not only going to object to the form, I am going to direct him not to answer that question.

By Mr. FELDMAN:

Q. Did you, at any time in making this survey, communicate directly with newspapers throughout the country?

A. No.

Q. Did you communicate with any single newspaper at all? Rather than all of them?

A. No.

Q. When you say "based upon common knowledge," is that your own knowledge?

253 A. My own knowledge and knowledge of others that I know are familiar with these things.

Q. Who were the people whom you discussed that with? I am talking about the particular people in regard to your conclusions as to newspapers in the country who sell color comic supplements.

A. Well, I discussed it—

Mr. MOORE: Wait a minute. He has already testified to that once. I am going to put you on notice that we are not going to go over and over and over. He has testified very clearly the ones he talked to.

Mr. FELDMAN: I am asking him specifically as to this point.

Mr. MOORE: That is the point he testified to before. You may answer.

Mr. FELDMAN: Will the witness answer?

The WITNESS: Well, I am lost. Will you repeat it for me, please?

(Whereupon the last question was read by the reporter.)
254

The WITNESS: It is still Chinese to me.

Mr. MOORE: I suggest you reframe the question. It doesn't make any sense the way it is.

By Mr. FELDMAN:

Q. Did you speak with Mr. Gorman with respect to this particular formula?

A. Yes, I did.

Q. Who else did you talk to just in regard to this particular formula?

A. I talked to our man, Bob Doyle. He handles all our billing and he is familiar over the years he has been with us about a lot of these newspaper runs as to how they are printed and how they have been changed around back and forth over the years. I talked to Jack Koessler who has quite a knowledge of these things. I talked to Walter Koessler as to his knowledge of where some of these runs were printed. I talked to Bessie Gorman who handles these matters down at Wilkes-Barre, John Booth down there. I talked to a number of people. I talked to our salesmen, I talked to Leonard Hershisser, one of our
255 salesmen. He is formerly general manager of the Star Color Printing Company in Wilmington, Delaware; he

is very familiar with these things because when he was in that category he was out soliciting newspaper accounts and he went out all through the southeastern district and solicited all these newspapers and he found out from them where they were having their color comics printed and those were the sources of my information.

Q. Directing your attention to Defendant's Exhibit A and to the figures you have under the year 1954, do these figures at any point here represent a total color comic production in the United States?

A. I would say that it is probably within one or two percent of what it might be. I am not an expert on this thing and I told you how I developed this information and I don't make any claims that it is perfect.

Q. Going back to the year 1954, I notice here that you have King Features and N.E.A. listed and in those years were
256 King Features and N.E.A. engaged in the printing of color comic supplements?

A. King Features was not.

Q. Was N.E.A. in that year?

A. I think at that time they operated what was known as the Buffalo Color Press.

Q. Do you know whether or not N.E.A. sold all the color comic supplements which were printed by Buffalo Color Press?

A. Whether N.E.A. sold them all?

Q. That is right, sir.

A. I would have no way of knowing that, Mr. Feldman.

Q. Did you consult with N.E.A. with regard to drawing up these statistics here at all or look at any N.E.A. records?

A. No.

Q. Did you consult with anyone at King Features in regard to drawing up these statistics?

A. No, I didn't.

Q. Do you know whether or not King Features in the year 1954 purchased all its comic color supplements from
257 International?

A. To my knowledge they did not.

Q. Was any effort made on your part or anyone else to determine what other color comic supplements were being printed for them, namely by any other printers other than International in that year?

A. Well, I know that we had two or three jobs of theirs at that time ourselves.

Q. Do you know any other printers who had any other jobs at that time?

A. Oh, I think they had a couple of jobs that were being printed in Fort Worth, the Star Telegram plant.

Q. But you did not determine all the jobs that were being printed for them, did you, prior to your compiling this list, namely, Defendant's Exhibit A?

A. Did I consult with King Features?

Q. That is right, in determining all the printers who supplied them in the year 1954?

Mr. MOORE: I am going to object to this. I think you are misreading the exhibit. This doesn't purport to tell
258 where King Features and N.E.A. sold printing and the other people on here. This is an estimate arrived at scientifically in accordance with the established records as to what they sold. It doesn't purport to show where they were printed. They sold it.

Mr. FELDMAN: I am asking the witness now whether these figures at any point here attempt to show the total color comic production for the year 1954 and he says yes.

Mr. MOORE: Yes.

Mr. FELDMAN: All right, now, you are talking about selling. The witness is not talking to me about selling.

Mr. MOORE: He is not talking to you about printing or where they were printed, what you are talking about.

Mr. FELDMAN: I am asking him now whether he knew where they were printed.

Mr. MOORE: He told you he didn't.

Mr. FELDMAN: All right, I want to find out if he made any other efforts. He told me he knows some knowledge. I
259 want to find out how complete his knowledge was.

By Mr. FELDMAN:

Q. Directing your attention to King Features, have you determined all the printers who supplied King Features in the year 1954?

A. In 1954 King Features was having some work done at Eastern Color, I believe. Some of their jobs were printed in their own printing plant, some of them were printed by us, some were printed by International Color. I know they had at least one job in Fort Worth, this Star Telegram. I couldn't say

positively whether World Color ever did any printing work for King Features or not or Acme of San Bernadino, California.

Q. This is just your present recollection at that time, is that correct, sir?

A. What is that?

Q. That was your present recollection when you discussed these statistics that are listed in Defendant's Exhibit A?

Mr. MOORE: Wait a minute, I object to that. He wasn't drawing it to show where they were printed. He was showing who was selling the supplements and this chart reflects who was selling the supplements.

Q. In other words, at any rate then, you never determined completely who was printing supplements in 1954, is that correct, sir?

A. No.

Q. Now, directing your attention to the circulation figures under the year 1954, do these figures herein regard to circulation just represent the total circulation figures you obtained from Editor and Publisher?

A. That is right.

Q. Now, does this purport in any way to represent the total color comic production for the year 1954 and I am referring now to the figures under "Circulation"?

A. You are talking about Gains here?

Q. Yes?

A. You are under gains now?

Q. No, I am talking about in the second column under 1954.

A. You are talking about circulation figures here?

Q. That is right, sir?

A. What do you want to know?

Q. I want to know whether they in any way, the circulation figures in any way represent the total color comic production for the year 1954?

A. I think it is pretty close.

Q. Now, are you aware of the fact that color comic supplements are sold in four-page units and go all the way up to at least 24-page units?

A. Yes, I am very aware of that.

Q. Upon what basis then did you say that the circulation figures are close to that?

A. To the number of 4-page units, it doesn't mean a thing.

Q. I am talking about actual color supplements published in the year 1954; isn't it a fact that some newspapers may have four pages in their color comic supplements and other newspapers may have 24-page units of color comic supplements?

262 A. I never heard of one having four; I never heard of one having twenty-four unless it would be a tabloid size. Are you talking about standard size?

Q. I am talking about standard size.

A. I never heard of one with twenty-four pages.

Q. Do the unit of pages vary then to your knowledge?

A. They vary all the time from week to week.

Q. What are the number of pages within which they vary?

A. Well, we have accounts that will vary any wheres from eight-page standard to an eighteen-page standard, so therefore some weeks they will run eight pages and some weeks they will run ten, twelve, fourteen, depending on what use they have for the section. The advertising content determines to a great extent the number of pages they publish in their color comic supplements.

263 Q. Therefore, the mere circulation of a newspaper will not be indicative, will it, of the total pages of color comic supplements the newspaper sells?

A. Not within a mile. I defy anybody to get that figure; it is impossible of computation. It would take you five years there to figure anything like that out. That is why I say these figures in Mr. Carlson's thing here have no particular meaning; they are based on these four-page units which have no substance at all. I mean, these are more accurate (indicating), they are a more accurate gauge of what goes on in the newspaper trade.

Q. Let's not argue the point, Mr. Hammond——

Mr. MOORE: I suggest that you started the argumentative question. You started the argument when you asked him if it wouldn't show whether they have one page or sixteen pages. It doesn't purport to show that. It purports to show those are the number of supplements that comprise without

264 regard——

The WITNESS: What difference does it make?

Mr. MOORE: Please be quiet a minute. Let me finish talking. Without regard to whether they are four-page units, as you have your figures, or sixteen pages.

By Mr. FELDMAN:

Q. All right, sir. Now, Mr. Hammond, isn't it a fact that printers throughout the country generally—now I am talking about Greater Buffalo——

A. You are talking about Greater Buffalo?

Q. No, I am not talking about Greater Buffalo.

A. You are not?

Q. They base their production units upon four-page units generally?

A. So do we.

Q. Well, is that generally the way it works?

A. We base it on eight-page sections; take your choice, eight pages, four pages, what's the difference?

Q. Aren't they based upon four-page units in regard
265 to job?

A. That was the method used for International and King for some cock-eyed reason, I couldn't tell you why.

Q. Do you know how other printers throughout the country outside of Greater Buffalo and International, base their unit of production?

A. No, I don't, whatever. There is no criterion or anything.

Q. At any rate, you don't know how they base their units?

A. No, I don't know how they base their units.

Q. Isn't it a fact that if a publisher were to purchase units of color comic supplements, in units other than four, such as six pages or ten pages, that printers throughout the country will generally charge more per page than if they bought it in terms of four-page units?

Mr. MOORE: I am going to object to the form of that question. It calls for a conclusion, if something happened and something else happened.

Mr. FELDMAN: Let's preface it with the word "when."

266 Mr. MOORE: It is the same objection whether you call it if or when, you are making an assumption.

Mr. FELDMAN: I am going to ask the witness to answer the question.

Mr. MOORE: I will let him answer, but I want my objection noted to the form.

Mr. FELDMAN: Do you know, sir?

Mr. MOORE: Do you know what other printers would do?

The WITNESS: What they do——

Mr. MOORE: Listen to the question. Do you know what other printers would do, do you know of your own knowledge?

The WITNESS: In regard to what? Read the question.

Mr. MOORE: Would you read the question?

(Reporter repeated the last question as follows.)

"Q. Isn't it a fact that if a publisher were to purchase units of color comic supplements in units other than four, such
267 as six pages or ten pages, that printers throughout the country will generally charge more per page than if they bought it in terms of four-page units?"

The WITNESS: I haven't the foggiest idea.

By Mr. FELDMAN:

Q. You have no idea at all?

A. No.

Q. What has been the custom in regard to Greater Buffalo Press?

A. Everything is relative. Our prices are proportioned for the number of pages, two, four, six, eight, ten, what have you, it is all the same.

Q. It doesn't make any difference at all?

A. No, it doesn't make any difference at all.

Q. Is that the same, as far as you know, in regard to International Color Printing Company?

A. I don't know.

Q. So when you are speaking then in that regard, you only know as to what Greater Buffalo Press does?

A. In regard to pricing?

268 Q. Yes?

A. The only area in which I have intimate knowledge is with regard to Greater Buffalo Press.

Q. You don't know anything about the other printers?

A. How they base their prices, I haven't the slightest idea.

Q. In regard to Greater Buffalo Press, does Greater Buffalo base its price upon the units of pages bought, or upon the circulation of the paper?

A. I think we explained that when we told you what our pricing methods were.

Q. I would like you to tell me now, is it just the number of supplements bought or is it the pages contained therein?

A. Initially, Mr. Feldman, you have a basic job to perform. the make ready operation. If it is eight pages, it is \$232.00; if

it is ten pages, it is \$290.00; if it is twelve pages, it is \$324.00. You can see for yourself that is all relative—proportioned, I mean. Now, that is the area where circulation affects it, regardless of the number of copies printed, that cost has to be absorbed in whatever quantity the newspaper requires.

269 Now, from there on, the paper content, the ink content, the press time and the handling is all proportioned in two-page units, two, four, six, eight, you can figure it out for yourself, and that is the way it works. You will find always the additional thousands prices in every instance are the same. The only time you have any variation in prices between one customer and another is due to the quantity that they use.

Q. Do you know whether or not Greater Buffalo or, at least, any other affiliate of Greater Buffalo, or subsidiary, has reimbursed Mr. Clinton for time spent at Sylacauga prior to the time he left International?

A. For the time he spent at Sylacauga prior to the time he left International?

Q. That is right, sir, whether he or International was reimbursed?

A. He was always on the payroll of International Color Printing.

Q. And as far as you know then, International was not paid any amount of money in connection with the services he rendered at Sylacauga by Dixie or any other subsidiary
270 of Greater Buffalo?

A. No, he was not.

Mr. FELDMAN: I have no further questions.

By Mr. MOORE:

Q. One item I neglected to cover: Calling your attention to page 4 of an affidavit attached to the Order to Show Cause made by one, Jack R. Hornaday, at the top of page 4, where he estimates, makes certain estimates of numbers of supplements purchased in an area consisting of seven or eight named states in the southeast—

A. Ten.

Q. Ten?

A. Yes.

271 Q. Did you, in the course of the computation you made, make a computation from the source you have recited before affecting that area?

A. Yes, I did.

Q. Do you have that computation?

A. Yes I have. I have it here.

Q. Now, based on the figures you used in compiling defendant's exhibit A for identification, what circulation of the early circulation of colored comic supplement do you compute for those ten states comprising the southeast as they are characterized in this affidavit?

A. Well, according to my calculations there were 127 newspapers located in those ten states with circulations of 6,454,189.

Q. From the information available to you that you used in preparing defendant's exhibit A for identification can you indicate what companies sell what numbers of supplements in that area?

A. The Greater Buffalo Press, 9.

Q. What?

A. 9.

Q. 9 papers?

272 A. 9 newspapers.

Q. What circulation?

A. With a circulation of 1,590,006.

Q. What percentage of the total is that?

A. I didn't compute the percentage.

Q. What about King?

A. I figured King at 49 with a circulation of 3,167,899.

Q. Forty-nine per cent or forty-nine papers?

A. I didn't figure these percentages, Jim. Do you want me to figure them?

Q. No. 49 papers with 3,167,899?

A. That's right.

Q. What about Atlantic?

A. N.E.A. do you want?

Q. N.E.A.

A. N.E.A. had 30, a circulation of 574,365.

Q. What about Atlantic?

A. Atlantic had one newspaper contract which they sublet to the Star Color Printing in Wilmington of 137,540. Now, whether you combine that with Southern Color Print or not, I don't know.

Q. What about Southern?

273 A. Southern had 22 newspapers with circulations of 626,996.

Q. What about other printers of colored comic supplement?

A. I figure there were twelve with circulations of 209,090.

Q. What about the newspapers themselves printing in their own plants?

A. There were four circulations of 148,293.

Q. And those computations were arrived at in the same manner as the computations you have described in defendant's Exhibit A for identification?

A. Same manner I prepared that.

Mr. FELDMAN: Excuse me. At this time do you want to offer that a defendants exhibit, what he is reading from?

Mr. MOORE: Yes.

The WITNESS: I haven't got any copies of this, Jim.

Mr. MOORE: I will mark it. We will keep it. Defendant's Exhibit B for Identification.

274 (Whereupon the document was marked Defendant's Exhibit B for Identification.)

By Mr. MOORE:

Q. Now, you have testified that there was very often a wide variation in the number of pages in the supplement furnished by the same newspaper over various weeks, is that right?

A. Yes.

Q. Is that variation due to advertising?

A. Yes, almost entirely due to advertising.

Q. In other words, the number of features stays the same but the advertising changes?

A. Generally, the features—to some extent they might drop features to save pages, but the control of the size of the supplement is almost entirely dependent on the advertising content in the section.

Q. Therefore, the one constant in these figures is the number of supplements rather than the size of them?

A. Boy, I believe in that!

275 Q. And your computations are based on the number of supplements furnished by these papers?

A. That is what my computation is based on, the number of supplements, which is the only sensible way to approach the thing.

Mr. MOORE: That is all.

Mr. FELDMAN: Are you through?

Mr. MOORE: Yes.

By Mr. FELDMAN:

Q. Mr. Hammond, in regard to the supplements you just spoke about being printed in the southeastern part of the United States, do you know how the size varies, how great the variation is?

A. I didn't say they were printed in the southeastern part of the United States.

Mr. MOORE: Published.

The WITNESS: Published.

Mr. FELDMAN: Published. Excuse me.

By Mr. FELDMAN:

Q. Do you know how great the size varies, whether a 4-page goes to an eight from one week to another or
276 whether it is just a one or two-page?

A. I never heard of a 4-page supplement.

Q. 6-page?

A. I have never seen one.

Q. Well, let us assume that there is a 6-page then. Do you know from your own experience how that 6-page fluctuates, whether it becomes twelve one week, or whether the normal inclination is, if it does increase, to go only one or two extra pages?

A. Papers that small, Mr. Feldman, don't change a great deal. If they have only got six pages, they haven't got any advertising and they hardly ever change.

Q. What types of supplements?

A. Well, newspapers that publish say an average of twelve papers will vary considerably. They will go to fourteen; they will go to ten. If it is a real dull period, they might even go down as far as eight occasionally.

Q. Are there ever instances when the number of pages would double?

A. Never saw anything like that happen.

277 Q. Mr. Hammond, during your experience in the employ of Greater Buffalo Press have you yourself actively gone out and solicited publishers in regard to the sale of color comic supplements?

A. You asked me that.

Q. I want to know again now. At any time?

A. Initially?

Q. Well, yes, initially.

A. No.

Q. Have you ever called upon publishers?

A. Oh, a great deal.

Q. How much of your time within the last year has been spent in calling upon publishers?

A. Not very much in the last year.

Q. What do you call "Not very much"?

A. Oh, during the past year I probably haven't spent a total of, well, I will say two weeks in time of calling on publishers. Two to three weeks maybe.

Q. What year do you recall having spent the greatest amount of time in calling upon publishers?

A. Well, it was probably around the years 1956 through '58, particularly the years where we had price increases.

278 Q. During those years did you call upon publishers throughout the country or did you confine your activities to particular areas?

A. Particular areas.

Q. What area or areas were those?

A. Well, could I ask a question here?

Mr. FELDMAN: No.

Mr. MOORE: If you know, say so.

Mr. FELDMAN: If you don't know, say you don't know.

Mr. MOORE: Well, now, you are going to confine yourself to the United States.

Mr. FELDMAN: Yes, only the United States.

The WITNESS: Well, most of my activities have been in Canada. Now in addition to that I have called in the Western New York area and part of Ohio, Cleveland, Erie, Buffalo, Rochester, Syracuse, Utica, Elmira, and what have you—around that area.

279 By Mr. FELDMAN:

Q. How much of your time during the year 1958 or that period that you are talking about when you had price increases did you spend in calling upon publishers in the United States?

A. Oh, gee, I don't know.

Q. With most of your time in the employ of Greater Buffalo concerned with calling upon publishers during that period?

A. Oh no. I wouldn't say most of my time.

Q. Was it a small amount of time or large?

A. At one time I probably spent maybe twenty-five per cent of my time in that sort of activity.

Q. Did you ever call upon publishers located in the southeastern part of the United States? 8

A. Never.

Q. Did you ever spend any time calling upon publishers in the western part of the United States and I am talking about the west coast.

A. How far west? I have called on publishers in Chicago.

Mr. MOORE: He said "west coast".

The WITNESS: Oh, the west coast? No, I have never
280 been to the west coast.

By Mr. FELDMAN:

Q. Have you ever called upon publishers in the State of Texas?

A. Yes.

Q. How many such publishers?

A. Three or four. I called on publishers in Louisiana, too.

Mr. MOORE: I am not going to——

The WITNESS: What is this all about?

Mr. FELDMAN: I am through with my line of questioning.

At this time I wish the record to also note my former objections as to materiality and relevancy as to any questions relating to the applicable market of color comic supplements sold in the southeastern part of the United States.

Mr. MOORE: I would reply with the same remarks
281 I had to the other objection.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: He is excused then?

Mr. FELDMAN: Unless counsel have some questions.

Mr. LONDON: I have no questions.

Mr. STEVENS: No questions.

Mr. FELDMAN: Off the record.

(Discussion off the record.)

Mr. FELDMAN: Let the record indicate that the witness, Mr. William Hammond, may sign the deposition before any notary public in the State of New York with the same force and effect as if signed before the reporter.

(Whereupon the deposition ended at 3:30 p.m.)

281-a

[Caption Omitted in Printing]

Proceedings held before HON. JOHN O. HENDERSON,
U.S. District Court Judge, Western District of New York,
on October 25, 1961, at Buffalo, New York.

Appearances: *Messrs. Raichle, Banning Moore & Weiss*, by *James O. Moore, Esq.*, & *Arnold Weiss, Esq.*, appearing in behalf of Defendant, Greater Buffalo Press.

Messrs. Gallop, Climenko & Gould, by *Jesse Climenko, Esq.*, and *Messrs. Lord, Day & Lord*, by *Robert B. Haynes, Esq.*, appearing on behalf of Hearst Corp.

Messrs. Baker, Hostetler & Patterson, by *Richard F. Stevens, Esq.*, appearing on behalf of Newspaper Enterprise Association, Inc.

Raymond M. Carlson, Esq., *Elliott H. Feldman, Esq.*, Department of Justice, Anti-Trust Division, appearing in behalf of Plaintiff.

282 PROCEEDINGS OCTOBER 25, 1961, COMMENCING AT
11:00 A.M.

The COURT: Gentlemen, as you know, we were held up a bit by Mr. Stevens' inability to get here. He called me from the airport. I asked whether he would have any objection to our proceeding without him, and he said none. We may go ahead. He will be here shortly.

Mr. MOORE: If your Honor please, I conceive this to be a much adjourned return day of the motion before your Honor, and my understanding is that the Government's proof on its motion for preliminary injunction, its primary proof is now in. Am I correct?

Mr. CARLSON: That is correct.

Mr. MOORE: And we have, on behalf of the defendant, whom I represent, filed with the Court certain affidavits, certain depositions, and today what we propose to do is to supplement that proof that we have already put in, supplement it to some extent, perhaps clarify it to some extent
283 in the form of oral testimony. I am frank to say that the testimony in some respects will be cumulative of some of the proof that has been made in affidavit and deposition form, but I would prefer to proceed in that manner because I think this question lends itself to development of the facts through testimonial form, rather than through the affidavits. On that premise, your Honor, I would proceed with your permission.

The COURT: You may proceed.

Mr. CARLSON: Excuse me, Mr. Moore, we did have this one formal matter.

Mr. MOORE: Yes.

Mr. CARLSON: Your Honor will recall that Mr. Crimi, Assistant United States Attorney, obtained a protective motion under our special statute, 15 U.S. Code 23. Subpoenas were
 284 duly issued to some of the persons named in there. With the development of Mr. Moore notifying us thereafter as to his witnesses, four of those subpoenas were canceled. There are five other persons not named in the motion that are present, were kind enough to come at our request. Because the time was short, we couldn't get the subpoenas served. I would ask your Honor, I would make a speaking motion to your Honor, that you permit subpoenas to issue so that the people may be paid. I am not saying they will be called, since we don't know what the nature of the proof would be as put in. These people are present on the part of the Government.

The COURT: I make an order that they will be paid for their mileage coming here as though they had originally been subpoenaed by the Government.

Mr. CARLSON: Does your Honor wish me to put the
 285 names in the record at this time?

The COURT: Do it during the recess. On the other hand, why don't you do it now, so it won't be overlooked.

Mr. CARLSON: The names of the persons who are not covered by the prior order, and who are present in Buffalo at the request of the Government and to whom subpoenas should issue to permit their payment are: William Foy, of Wilkes Barre, Pennsylvania. Joseph J. Gorman, of Wilkes Barre, Pennsylvania. William J. Williams, of Wilkes Barre, Pennsylvania. Jack R. Hornady of New York City. It is in the vicinity of New York City, I think the town is Scarsdale. The last one, Robert B. Smith of Newport News, Virginia. Thank you very much, your Honor.

286 JOSEPH J. GORMAN, called as a witness on behalf of the defendant, Greater Buffalo Press, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman, you reside in Wilkes Barre, Pennsylvania?

A. Kingston, Pennsylvania.

Q. Is that located in the environs of Wilkes Barre?

A. Yes.

Q. How long have you lived there?

A. I lived in that neighborhood for all my life.

Q. Well, I will ask you how long is that, how old are you?

A. Sixty-five.

Q. And what is your occupation?

A. President and General Manager of International Color Printing Company.

Q. How long have you been the President and General Manager?

A. Approximately thirty-seven years.

Q. Now, when was the International Color Printing Company founded?

A. The Telegram Publishing Company primarily was founded in 1922. The name was changed to International Color Printing Company in 1924.

287 Q. And it has functioned since 1924 as International Color Printing?

A. That is correct.

Q. Is that a Pennsylvania Corporation?

A. Pennsylvania Corporation.

Q. What was the business of the original company, the Telegram Company?

A. The original business was to print a weekly Sunday newspaper.

288 Q. What was the distribution of that newspaper?

A. Do you mean the circulation?

Q. Well, in what areas was it distributed?

A. In the Wilkes-Barre area.

Q. And how long did it print the newspaper?

A. About two years.

Q. Then what was the fate of the newspaper?

A. The newspaper was sold and then went out of business.

Q. Was that at the time that the name of the company was changed?

A. In 1924, at the time we sold the newspaper.

Q. All right. Now, what business did International embark on at that time?

A. The printing of color comics supplements.

Q. And for what papers did it print these color comics supplements?

A. We started to print, first of all, for King Features Syndicate quite a number of small newspapers, I don't remember the

names of them at this time, but we picked up two newspapers of our own directly, one from Asheville, North Carolina and one from Providence, Rhode Island.

Q. So, you had contracts originally with two newspapers in the locations you have just described and a contract with King, is that right?

289 A. First we had no contract with King. King contracts started about 1925 or 1926. There was no written contract.

Q. On the original contract with King how was that handled? Were there orders placed for printing?

A. Orders were placed for the printing and we had a contract to print the minimum of a certain number of thousand of four-page sections per week.

Q. Was this the entire business of International at that time?

A. That is all we had, the printing of comic supplements.

Q. Now, did there come a time when you entered into a contract with King?

A. About 1926.

Q. And did you retain also your contracts with other newspapers?

A. No, we turned that printing over to King Features Syndicate.

Q. Now, from 1926 to 1955, had International ever had a contract with any newspaper to print color comics supplements?

A. No, sir.

Q. During that same period has International ever solicited from any newspaper the printing of color comics
290 supplements?

A. No, sir.

Q. During that period has International ever employed a salesman?

A. No, sir.

Q. Well, confining yourself to that period, will you describe just what the business of International was?

A. King Features salesmen sold contracts for the printing of colored supplements to other newspapers and then they sublet the printing to us. We acted as a subcontractor for King Features.

291 Q. Well now, was that relationship carried out pursuant to a contract or pursuant to a series of contracts with King?

A. A series of contracts with King.

Q. And without getting into the details of the contract, can you describe briefly in substance what the contract was?

A. The substance was that we were to print for King Features Syndicate on an exclusive basis. We were to do all the printing that King had and that King would give printing to no one else but us, but the time came when it was understood that we would be exclusive printers and that we would print for no one else but King, but King could give twenty-five percent of their work to others.

Q. Now, did you handle most of the relations with King during this period?

A. The contractual relations I handled most of.

Q. Now, during this period, and I will define it again as from 1926 through 1955, what contacts did you have with newspaper publishers or newspaper owners?

A. Occasionally I went out with the King Features Syndicate salesmen as a matter of service. The salesman would deal with price and he would turn to me when it came
292 to a question of a technical matter such as how big a section would be, transportation and so on, but when it came to a matter of dealing with the newspaper on price, I left the room at the request of the King Features salesmen.

Q. Now, in other words, over these years you had nothing to do with price?

A. At no time during all of that period did I know anything about their price.

Q. And did you have anything to do with sales?

A. I had nothing to do with sales except in a service way.

Q. Now, over the years in question, can you describe the nature of your relationship with the King organization?

A. My personal relationship was good. My business relationship was such that I had a constant and everlasting struggle through each contract to get sufficient money to make a fair profit or to make even a small profit and I would agree to some extent what Mr. Nicht said in one of his memorandums, they controlled us lock, stock and barrel.

Q. Now, Mr. Nicht, who is he?

A. He is the general sales manager of King Features Syndicate.

293 Q. Now, over these years in question, how did International fare financially in its business?

A. We had a struggle throughout all the years. At no time throughout the thirty-five or thirty-seven years did we ever make more than one percent profit on our sales.

Q. Now, directing your attention to the year 1954 and the close of the year 1954, what was the financial condition of International?

A. At the close of the year 1954 we had a deficit of working surplus of approximately—working capital, rather, of approximately, \$100,000.00.

Q. Now, you say a deficit in working capital. Would you describe that? In using working capital, you are referring to the difference between your current assets and current liabilities?

A. Yes, sir.

Q. And at the close of 1954 you state that your current liabilities exceeded your current assets by approximately \$100,000.00?

A. That is correct.

Q. Now, who owned the capital stock of International during the years in question?

A. In the early part of the years, it was owned by Mrs. May N. Govin and her son and her daughter——

294 The COURT: What was that name?

The WITNESS: May N. Govin, and her son and her daughter. For the past fifteen or twenty years the stock was owned by the son and the daughter. The daughter's name is Mrs. Mazie Scofield. The son's name was Ralph Govin.

By Mr. MOORE:

Q. Now, during the years that Mrs. Scofield and Mr. Govin owned the company, did they take any active part in it?

A. No, sir.

Q. Did you conduct all of the affairs of the company?

A. Yes, sir.

Q. Now, during these years in question did the stockholders of International make any further contributions to the capital of the company?

A. No, sir. There were one or two occasions when we borrowed money from one stockholder but no contributions in the way of capital.

Q. Well, what was the extent of that borrowing?

A. \$35,000.00.

Q. Now, when did you first give consideration to the
295 establishment of a southern affility or southern plant?

A. I don't know the exact date but it was approximately twenty-five years ago.

Q. And did you make any investigations from time to time?

A. I made investigations over the twenty-five year period.

Q. And did you have any communications with your customer, King Features, on that subject?

A. Constantly, communications in writing and verbally about the necessity, the absolute necessity of getting a plant started in the south.

Q. And just to get a little of the background, in the business of printing and selling photo comic supplements, is the problem of freight, cost of freight, a substantial item?

A. That is a substantial item. That is the main reason why we wanted to start a plant in the south.

Q. Now, did there come a time when you made a more detailed investigation of the possibility of building a plant in the south?

A. We were held up on a number of occasions by the lack of cash. We were held up also by the inability to get newspaper cheap enough, but then in 1954 it came to me that the Coosa Newsprint Company would be able to supply us with some newsprint and that is when our investigation became more detailed.

Q. Now, the Coosa newsprint was located where?

A. At Coosa, Alabama.

Q. Where is that in relationship to Sylacauga?

A. About ten or eleven miles from Sylacauga and ten or fifteen miles from Birmingham.

Q. Was your Coosa mill soliciting the building of a printing plant in the area?

A. Prior to the time they saw me, I believe they solicited other print companies, particularly, but one that I know, the Greater Buffalo Press.

Q. Now, apropos of that solicitation, did you make a trip to Sylacauga?

A. Yes, sir.

Q. And when did you first go there?

A. About the middle of 1954.

Q. And then continuing, was another trip made in 1955?

A. A number of trips were made between 1954 and 1956.

Q. Now, at any time during this period and prior to 1956, did International ever commit itself to the building of a plant in Sylacauga?

A. Never actually committed ourselves to the building of a plant.

Q. Did you make some tentative plans?

A. We made tentative plans hoping that conditions might turn out so that we could go ahead, nothing definite.

Q. What was the stumbling block?

A. The stumbling block was lack of cash.

Q. Let me ask you, during 1955 were you still under contract to King?

A. Yes, sir.

Q. And what was the term of that contract?

A. For the early part of 1955, we were under what we call six-months contract. In other words, a six months notice of discontinuance. We were striving for a longer contract
298 in 1955.

Q. Did you have negotiations with King during that period for a longer term contract?

A. Yes, sir.

Q. Did you have negotiations with King on the subject of financing a plant?

A. Yes, sir.

Q. Were either of those negotiations successful?

A. No, sir.

The COURT: Excuse me, Mr. Moore, Mr. Stevens is here. Let him get comfortable at the counsel table.

Mr. STEVENS: Thank you, Your Honor. I apologize Your Honor.

The COURT: Not at all, I understand perfectly.

By Mr. MOORE:

Q. I call your attention, Mr. Gorman, to a copy of a letter dated March 11, 1955, addressed to Frank J. Nicht, King Features Syndicate, from International Color Printing Company, Joseph J. Gorman, which letter appears in the Government's exhibits identified as Reply Exhibit 5 annexed to the
299 Reply Affidavit of Mr. Raymond Carlson, and I ask you if you wrote that letter?

A. Yes, sir.

300 Q. Now, I call your attention to the phrase contained in the second paragraph of the letter, reading: "It is

impossible for us to commit ourselves to purchase of land and erection of a building until we have a long term contract at a price which will enable us to amortize within a reasonable number of years." I ask you if this was a part of the negotiations you had described with King?

A. That is the general tone of the negotiations throughout the period.

Q. I call your attention to the second next succeeding sentence: "Also, we cannot even think about contacting a bank until such time as we have a long contract which will give us a reasonable assurance of a fair profit", and ask you if that also was a part of that negotiation that you were carrying on?

A. Yes, sir.

Q. Now, the tentative plans that you had for a southern plant, will you describe those tentative plans with respect to how you intended to set it up if you had gotten the financing?

A. We had in mind a building of about twenty-five thousand square feet. We had in mind the possibility of moving either presses from Peoria to Wilkes-Barre, and then presses
301 from Wilkes-Barre to Sylacauga, or presses from Peoria to Sylacauga. It was indefinite, but we had in mind the use of presses we then had, single width presses, at either Peoria or Wilkes-Barre.

Q. Now, Peoria was a plant maintained by International in Peoria, Illinois, is that right?

A. That is correct.

Q. What did your plans entail with respect to the volume of printing that would be moved?

A. Counting up all of the business we had in the south and realizing that in nearly every instance there would be a heavy transportation savings for the newspapers we figured on the possibility of printing from six million to eight million four-page sections on the presses which we would put there over a period of a year or two.

Q. And what was your plan with respect to Peoria?

A. We expected to close the Peoria plant down at that time.

Q. Let me ask you as to the Peoria plant what the history of that was operation-wise?

A. We started the Peoria plant in 1936, when there was very excellent transportation facilities there, but finally it developed to a point where passenger trains carrying baggage didn't go into Peoria. So, it became very bad from
302

the transportation standpoint. Our production there wasn't as good as it ought to be at any time. The press was incapable of printing varied size runs and the unions were very difficult so far as production was concerned. As a result, we had a more or less steady loss.

Q. Now, had you on behalf of the owners of the stock of International prior to 1955 ever made any attempt to dispose of the company?

A. The owners themselves made an attempt to dispose of it.

Q. Was there any negotiation on that?

A. There was negotiation with Hearst newspapers.

Q. And what was the result of that negotiation?

A. Hearst newspapers didn't want it.

Q. Did there come a time when you had some negotiations, or conducted some negotiations, with Mr. Walter Koessler of Greater Buffalo Press?

A. Yes, sir.

Q. When was that?

A. The latter part of 1954, as I recall it.

Q. How long did those negotiations——

A. They lasted until June, 1955.

303 Q. And in June of 1955 what was the result of those negotiations?

A. Greater Buffalo Press bought the stock of International Color Printing Company.

Q. It acquired all of the outstanding stock?

A. Yes, sir.

Q. And did you know the price?

A. Approximately five hundred seventy-five thousand dollars.

Q. Now, subsequent to the purchase of the International stock by Greater Buffalo, was there any change in the management of the International?

A. There was no change in the Wilkes-Barre management of International subsequent to the change.

Q. Did you continue as president?

A. I continued as president.

Q. And as general manager?

A. And as general manager.

Q. Did you direct all of the operations of the company?

A. Yes, sir.

304 Q. And what, if any, changes were effected at Wilkes Barre, the plant of International, subsequent to the acquisition of its stock by Greater Buffalo Press?

A. Very substantial and material changes which eventually resulted in a great saving in production.

Q. Will you describe briefly what those changes were?

A. First of all, it started in the stereotype department, in which we make plates. They showed us a new way that cut matts, so that the matts would be perfectly square, and plates from these matts would squarely fit on to the press.

Q. You say they showed you?

A. Greater Buffalo Press showed us. They provided us with the machines necessary to cut these matts in this manner. There was no point in having matts which were perfect unless we had plates that were nearly perfect. They provided us with machines, which we had never seen, which would allow us to register the plates. When they would go on the press they would all fit, fitted together. Ordinarily, prior to 1956, when we put plates on the press, they would be from a quarter of an inch to an inch out. As a result, it would take four hours of
305 press time to register the plates. By reason of the equipment which Buffalo sent to us, which we started to operate ourselves, we were able to cut the registry time in half. This resulted in a considerable saving in production.

Q. Do you describe that change in system as a preregistry system?

A. Pre-registry, that is right.

Q. In your experience in the printing business, had you ever seen that before?

A. I had never seen it before.

Q. What work was entailed? Can you describe, not in detail, the general nature of the work that was entailed to effect this; did it take a long period of time?

A. We had to change all of the clips on our presses, we had to change the rings, we had to move our stereotype equipment from Parsons to Sheldon, which is in Wilkes Barre.

Q. Parsons is a plant?

A. Yes, which we own.

Q. Where is that?

A. In Parsons, Pennsylvania, part of Wilkes Barre.

Q. You call that the Parsons plant?

A. Yes.

306 Q. You have a plant called the Sheldon plant?

A. Yes, where we do all of the stereotyping now.

Q. Well, let me see if I can shorten it up. How long did it take to completely install that preregistry system?

A. Probably about two years. Maybe a little more.

Q. And the installation was completed in 1957 or 1958?

A. About 1957 or 1958.

Q. What was the effect of this change upon the press room production?

A. It cut our registry time to the point where we increased our press room production, per press, by twenty-five percent.

Q. Did that change in that increased efficiency effect the earnings?

A. As a result of the change in production, the earnings were improved to the point where, over a period of five years, we increased our working capital position from a deficit of one hundred thousand dollars, to approximately eight hundred thousand dollars surplus.

Q. So that getting into 1960, your working capital, which you define as the excess of your current assets over current liabilities, was around eight hundred thousand dollars?

307 Mr. FELDMAN: Could we have the period stated as to the last question?

Mr. MOORE: I said, from the time of the acquisition of the stock of International by Greater Buffalo Press up through 1960.

By Mr. MOORE:

Q. Now, how did you finance that installation of the preregistry system?

A. As I said before, these machines came from Buffalo. Buffalo billed us for them. We paid for them, we financed it by reason of the fact we were showing a greater profit than we did before 1954; so that at the same time we were improving our current position, we improved our fixed assets position, and we increased our fixed assets over a five year period by approximately six hundred thousand dollars.

308 Q. In other words, from the time that Greater Buffalo acquired the stock of International up to and through 1960, your fixed assets—before depreciation is it?

A. Before depreciation.

Q. —increased by how much?

A. Approximately six hundred thousand dollars.

Q. Now, in paying Greater Buffalo for the materials that were used and the work that was done on these facilities, were these payments made currently or were they deferred at the beginning?

A. They were deferred slightly but then they started to make them currently.

Q. And you made them currently as you got the earnings?

A. Yes, sir.

Q. Now, after the acquisition of the International stock by Greater Buffalo, did you negotiate another contract with King?

A. Yes, sir.

Q. And what was the term of that contract?

A. The term of that contract was ten years.

Q. And without going into detail, were the terms of the contract substantially the same as they had been?

309 A. Substantially the same.

Q. Now, did there come a time when the Peoria plant of International was closed?

A. Yes, sir.

Q. And what was the reason for the closing of that plant?

A. As I have already stated, one of those reasons was the lack of transportation facilities. They could ship from Buffalo to St. Louis and in that area almost as cheap as Peoria. Also, the plant lacked facilities to build a larger size runs, such as the fourteen page sections, and they were becoming in demand. We did not own the building. There was no room for expansion and the equipment was such that there was no point in spending a great amount of money to pre-register. The stereotype room was such that it was impossible to put pre-registry machinery anyway. Therefore, for those reasons, and because the plant had never made any real money, we decided to close it.

Q. Now, prior to the time that Peoria was closed, had any runs of International been shifted to Greater Buffalo?

A. No, sir.

Q. And had any runs of Greater Buffalo been shifted
310 to International?

A. Not that I recall.

Q. Now, upon the closing of the Peoria plant, what distribution was made of the runs that had formerly been printed there.

A. Saving transportation, Buffalo started to print about four million of the Peoria total, we started out to print about one million five hundred thousand or thereabouts, but in turn Buffalo gave us approximately four million, four hundred thousand of their own work, so that there was a net gain through the arrangement thereof about one million three hundred thousand.

Q. Now, the work that was given you by Buffalo were runs that were contracted for by Buffalo with the publishers?

A. That is correct.

Q. What would be some of those runs?

A. Herald Tribune would be one; Allentown would be another; Lancaster would be another, and there are a number of small runs.

Q. And you didn't have any contracts with those papers?

A. I had no contracts with with any newspapers at any time.

311 Q. Your only contract was with King?

A. With King Features.

The COURT: Excuse me. I would like to get one thing straight, Mr. Moore. Apparently Wilkes Barre out of this exchange after Peoria closed had a net gain in output by reason of the Buffalo Press sending the work down to them. I didn't get the figure. Did he have a figure?

Mr. MOORE: I will get to that.

The COURT: All right.

By Mr. MOORE:

Q. Production at Peoria was approximately what?

A. Was approximately six million.

Q. Six million?

A. Yes.

Q. You call those fours?

A. Yes.

Q. Would you describe that?

A. A four-page section is four pages of comics. If we have a twelve-page section, we call that three fours. We go on a unit basis of four-page sections.

312 Q. So, there were six million fours per week, is that?

A. That is correct, that is approximately.

Q. Approximately being printed at Peoria?

A. That is correct.

Q. And when Peoria closed approximately four million of the six million were then turned over to Buffalo for printing?

A. That's right.

Q. And approximately around two million—

A. Approximately one million two hundred thousand or three hundred thousand, thereabouts, came to us.

Q. What was the reason for the distribution that way?

A. It was necessary for us through our arrangement with King when we stopped the Peoria plant to absorb the difference in transportation between Peoria and Wilkes-Barre. Now, Buffalo could ship cheaper to those places than we could, therefore, it was better for Buffalo to take it and save some of the transportation. But rather than have us lose that whole amount at one time, Buffalo turned over a lot of their work to us which I think was around four million four hundred thousand.

Q. So, the reason the work was placed in Buffalo was because of transportation?

A. Primarily transportation.

313 Q. And Buffalo, in turn, turned over work to you which you have retained to this date, have you not?

A. Yes, sir.

Q. Now, save for that transfer or exchange which came of runs, has there been any other substantial exchange of runs between Wilkes-Barre and Buffalo?

A. No, sir.

Q. Did there come a time after the acquisition of the International stock by Greater Buffalo that a determination was made by the Greater Buffalo to build a plant at Sylacauga?

A. Yes, sir.

Q. And did you participate in the meetings leading up to that?

A. Yes, sir.

Q. Can you tell us what plans were made for the building and equipping of this plant?

A. We had in mind originally a twenty-five thousand square feet building.

Q. That was International's plan?

A. International.

Q. Prior to 1955?

A. 1955, using smaller presses. But after stock was taken over by Greater Buffalo, it was decided that twenty-five thousand was not large enough and we should have at least

314 forty-five thousand square feet, and it was decided then that Peoria presses or the Wilkes-Barre presses would not be satisfactory for the work which would be done down there. And then we learned about the possibility of buying a press in Baltimore. I told Mr. Koessler about it; he says, "Go ahead and purchase it for the Sylacauga plant."

Q. Now, when you state it was decided, will you state who made those decisions?

A. Which decision is that?

Q. As to the forty-five thousand foot plant.

A. It was made on the advice of Walter Koessler.

Q. And who directed the purchase of this press 2022?

A. Walter Koessler.

Q. What was the purpose of the purchase of this press?

A. To print comic supplements in Sylacauga.

Q. Was it ever intended that that press would be used in Wilkes-Barre?

A. No, sir.

Q. Was there any place for the press in Wilkes-Barre?

A. There was a place for it if there was a need for it, but the need wasn't there.

Q. Now, what were the plans for the press 2022?

A. Greater Buffalo had innovated a five-plate wide press, the first in existence to my knowledge. 2022 press was built in such a manner that it could be changed over to five-plate wide with the aid of Greater Buffalo drawings to be supplied by them and so forth.

Q. To interrupt you a minute, did Greater Buffalo supply all these drawings for the transformation of this press?

A. All the drawings and all the ideas for the transformation of the press.

The COURT: What was this, a new press?

The WITNESS: No, it was a used press, used by the Baltimore News Post for a number of years.

316 Q. Let me clarify that. In this business of printing color comic supplements is it a custom to rebuild presses to some extent?

A. It is the general custom to rebuild presses in the ready print business. To my knowledge, there hasn't been more than three new presses purchased by the ready print companies over the past thirty years.

Q. Had you ever seen a press similar in design to the plans that were evolved for press 2022?

A. I never seen a five-plate wide press except the one which Buffalo built for themselves.

Q. Where was that one located?

A. In Dunkirk, New York.

Q. Were the plans for the rebuilding of Press 2022 patterned on the Dunkirk press?

A. Yes, sir.

Q. After the acquisition of this press, where was it taken?

A. It was taken to a small, old warehouse adjoining our plant at the Sheldon, and we proceeded to erect it there.

Q. And what work was done on it there?

A. There was quite a bit of work done there making it ready for the fixe-plate width, rebuilding the cylinders so that
317 they could carry a third, half and the six size plates. There was work done on the folder.

Q. And now, that work was done in accordance with plans and specifications furnished by Greater Buffalo, is that correct?

A. Yes.

Q. What about the parts and materials for the changes in the press?

A. Some of the parts and materials were purchased by us directly, later on charged to Greater Buffalo. Some of the parts and materials and the drawings came direct from Buffalo.

Q. Now, the purchase price of the press, who paid for that originally?

A. We paid for the press.

Q. And did you later bill Greater Buffalo?

A. Later billed Greater Buffalo.

Q. And were you paid for it?

A. Yes.

Q. When was the—

The COURT: Excuse me, who of your employes did the labor on the press?

The WITNESS: International Color Printing did the original labor on the press.

The COURT: Was it billed back to Greater Buffalo?

318 The WITNESS: No, the work they did in Wilkes-Barre was in their spare time, wasn't billed to Buffalo.

By Mr. MOORE:

Q. The parts and materials were all billed back?

A. Yes, sir, also the work which we had done by outside concerns such as Hess and Bartlett.

Q. Now, this press was required [sic] when?

A. About the latter part of 1955.

Q. And when was the bulk of the work that was done on it in Wilkes-Barre done on it?

A. Part of the work was done in 1956, but the great bulk of the work wasn't done until 1959.

Q. And when was the press shipped to Sylacauga?

A. In 1960.

Q. About when, do you recall? In July or——

A. June or July of 1960.

Q. At that time was the press completed?

A. No, sir, there was a great amount of work left to be done because, for one reason, when the press was erected in Wilkes-Barre it was erected in an old warehouse and the floor caved in and threw the press out of line. It couldn't be set up.

319 Q. There was a very considerable amount of work to be done rebuilding the press after it arrived in Sylacauga.

Q. Just to cut it short, would you say that more work was done in Sylacauga than was done at Wilkes-Barre?

A. I would say considerably more.

Q. What occasioned the holdup in the work on the press 2022?

A. We decided it was more important to go ahead with the pre-registry work which meant we had to change all of our presses in both Sheldon and Parsons, put in the stereotype machinery, and so forth. For the first two or three years after we purchased the place we had no time to work on the press 2022.

Q. So that for the first two or three years these maintenance employes were working on setting up your pre-registry work?

A. Yes, sir.

Q. At Wilkes-Barre——

A. And the regular routine work.

Q. When that was completed they then proceeded to do the bulk of the work that was done there on 2022?

A. Yes, sir.

Q. Prior to the time the press was shipped to Sylacauga in

320 July of 1960, did you invoice Greater Buffalo for any work or materials done on it?

A. We started to invoice them about July, but prior to that we had invoiced them for quite a bit of initial work done on the building. In July 1960, we started to invoice them for the press.

Q. After the press was shipped you invoiced them?

A. Yes, sir.

Q. Now, were certain employees from Wilkes-Barre sent to Sylacauga after the press was shipped to complete the work there?

A. Yes, sir.

Q. And how many employees were involved?

A. Six.

Q. Were these the same employees who had worked on it previously?

A. Not particularly. The men who worked on it previously—maybe at one time nearly everybody in the Maintenance Department worked on it. The six employees went down and worked on it for a period of a year or a year and a half.

321 Q. Now, they remained on the International payroll?

A. Yes, sir.

Q. And did you invoice Greater Buffalo?

A. Yes, sir.

Q. For their services?

A. Yes, sir.

Q. And for all of the services?

A. Yes, sir.

Q. For all of the expenses involved in keeping them there?

A. Yes, sir.

Q. And were those invoices paid?

A. Yes, sir.

Q. Now, you mentioned other work with reference to the Sylacauga plant. Was there other work done in Wilkes-Barre?

A. No. I meant by that work which was done by contract which they billed us as a matter of expediency or accommodation and we billed Buffalo.

Q. Those invoices were billed currently?

A. Yes, sir.

Q. Now, let me ask you, were substantial resources of Wilkes-Barre ever used in developing Sylacauga?

A. No, sir.

Q. And has International been paid for all of its out-
322 of-pocket expenses in connection with Sylacauga?

A. Yes, sir.

Q. Now, directing your attention to the King contracts or the King business that is sent to Wilkes-Barre for printing currently, is there a substantial amount of that business which is printed for King at the order of King, for delivery to Southeast?

A. Yes, sir.

Q. And how was the transportation handled by International on that business?

A. We pay the transportation and then we bill King Features and King Features pays us in most cases, maybe one or two C.O.D., but in most cases we pay the transportation and King Features pays us.

Q. Now, are you in general familiar with some of the transportation differentials between Sylacauga and Wilkes-Barre for shipment to the Southeast?

A. Generally so.

Q. Well, take for an example, do you print for King a supplement for delivery in Birmingham?

A. Yes, sir.

Q. And do you know approximately how much it costs to ship that supplement from Wilkes-Barre to Birmingham?

A. Approximately \$1.25 to \$1.40 a hundred.

323 Q. A hundred pounds?

A. A hundred pounds.

Q. And what is the supplement, what does the supplement order weigh each week?

A. The Birmingham order would run in the neighborhood of 30,000 pounds.

Q. Do you know approximately what it would cost to ship that same supplement from Sylacauga to Birmingham?

A. Approximately twenty to twenty-five cents.

Q. So there would be a differential in the transportation rate there of approximately \$300.00 a week?

A. Yes, sir.

Q. Now, do you know of any way in which the efficiency of your operation at Wilkes-Barre could be increased to the extent that you could meet that transportation differential?

A. No, sir.

Q. And would that same situation prevail in various other jobs sent to the southeast?

A. Not to that total extent. One way or the other the savings would be twenty-five to fifty cents a hundred.

Q. Now, from your experience in this business, do you have an opinion as to what effect with respect to business the
324 erection and operation of a printing plant in the south-east area would have on the business of the International?

A. I told our people as far back as seven years ago that ultimately and inevitably there would be a plant in the south and, as a matter of fact, I am sorry to see it, we would
325 lose work.

Q. In the absence of any restrictions, you would expect to lose work to Sylacauga, if that opened up?

A. Yes, sir.

Q. Well, now, a shift of four million fours from Wilkes Barre to Sylacauga will result in a decrease in the Wilkes Barre production?

A. Yes, sir.

Q. And would it result in a decrease in the Wilkes-Barre products?

A. Yes, sir.

Q. Do you think you would still operate profitably?

A. That would be a matter of—relatively speaking, we wouldn't make as much money as we were making now. If we cut our production by fifteen percent, we might reduce our profit by forty percent.

Q. But you still could operate at a profit?

A. I still think we could operate at a profit.

Q. Now, have you had any discussions or made any plans to meet this problem if it should eventuate?

A. I have talked to Walter Koessler about it on various occasions. I know that he has been in touch with newspapers in our geographical area, hoping to fill in the volume we will lose.

Also they have built up a very profitable, substantial
326 commercial business over the past five years. They seem to have built up a know how in the commercial business which is equal to what they had in the comic printing business.

Q. Let me ask you about this commercial business. Has commercial business been placed at Wilkes Barre by Greater Buffalo?

A. Yes, sir.

Q. How recently?

A. As recently as last month—this month.

Q. Did International ever have any of that business prior to the time that Greater Buffalo acquired its stock?

A. Occasionally. Over the period of the years we did one or two jobs for local newspapers, but that was the extent of our commercial business.

Q. Well, did it approximate in any way the ——

A. No, sir.

Q. —Business you are getting from Greater Buffalo?

A. No, sir.

Q. Now, is International equipped with its own personnel that it now has to go out and get commercial business?

A. I would say no. The commercial business involves
327 a very intricate knowledge of typography, engraving, binding and stitching, all of which knowledge Buffalo has and equipment for which Buffalo has and which we do not have, but through working with Greater Buffalo I feel they could handle our commercial problems for us and build up our commercial business.

Q. The fact is they have done that?

A. They have done that.

Q. Was there some problem of engraving, too, that you get into with commercial business?

A. Engraving, typography, binding, stitching, the use of rubber, none of which we are familiar with.

Q. Now, do you know whether or not there are in the geographic vicinity of Wilkes Barre, newspapers that print their own color comic strips?

A. Yes, sir.

Q. And do you know whether or not, if those accounts were obtained, that the loss of runs would be replaced?

A. The particular accounts we have in mind would replace the runs which we may lose to King Features work in the south.

Q. Now, on this material that you sent to Sylacauga, who decided on what you would charge Greater Buffalo for
328 that?

A. I did.

Q. Anybody from Greater Buffalo ever tell you what to invoice them for?

A. No, sir.

Q. Was any question made about the amount of the invoice?

A. No, sir.

Q. And is the same thing true of the charges made on press 2022?

A. Yes, sir.

Q. Now, over the past five years, as you have testified, Wilkes Barre, the International plant, has received certain equipment and material from Greater Buffalo?

A. Yes, sir.

Q. And Wilkes Barre, in turn, has shipped some material from its plant to Greater Buffalo?

A. Yes, sir.

Q. And those invoices are sent and paid each way, are they not, on that material?

A. With the exception of two reels about which there is some question and some confusion. Other than that, it has all been paid.

Q. Well, right now there is some equipment in the possession of International that is the property of Greater Buffalo?

329 A. That is correct.

Q. And those are reels, you say?

A. Parts for reels.

Q. Since the entry of the restraining order, you have been unable to ship those?

A. That is correct.

Q. Now, does International require certain parts from Greater Buffalo?

A. At the particular moment, there is several things we need, and as time goes on we will need more, because Buffalo is the only one who can make the particular parts we have in mind.

Q. Now, directing your attention, can you describe one of the particular parts?

A. Plate splitting machine, which we need very badly, and which Buffalo can provide, and which is impossible to buy anywhere else.

Q. Well, now, this plate splitting machine is used in connection with your pre-registry process?

A. That's right, in our stereotype equipment we now have a plate splitting machine. It's out of order and becoming worn, and eventually, in the not too far distant future we will need another one to replace it.

330 Q. And the plate splitting machine you have now was designed and built by Greater Buffalo, wasn't it?

A. Yes, sir.

Q. And your company doesn't know how to build one?

A. No, sir.

331 Q. Now, over the past five years has International acquired certain secondhand parts and material and equipment for its use and Greater Buffalo's use?

A. Yes, sir.

Q. Can you give us an example of that?

A. We bought approximately forty-eight press units from Hearst Newspapers which we hope to use partly ourselves, we intended eventually for Buffalo to use part of it, they would pay us, but mostly, most of the units stand in our warehouse now, and it is impossible for Buffalo to take any of them out for their use.

Q. Do you have any possible use for all of them?

A. No, sir.

Q. It has been called to my attention; do you recall at that time that press 2022 was purchased from the Baltimore paper, that also there were purchased some Sheridan machines?

A. They were purchased from another source.

Q. And they were purchased by Greater Buffalo?

A. Purchased by us and billed to Greater Buffalo.

Q. The same way you billed the press?

A. That is right.

Q. And those Sheridan machines never even went into your plant, did they?

332 A. Never, no, sir.

Mr. MOORE: If Your Honor will indulge me for a minute.

The COURT: Yes.

By Mr. MOORE:

Q. Just one or two more questions and I will be through, Mr. Gorman. In re-building press 2022 International was in effect acting as a machine shop on the part of the work they did?

A. Yes, sir.

Q. Acting in accordance with plans and specifications furnished?

A. Yes, sir.

Q. And using personnel who at the time were not preoccupied with the work of International?

A. Yes, sir.

Mr. MOORE: You may ask.

The COURT: Where did the Sheridan machines come from?

The WITNESS: They came from the Keystone Bindery in Wilkes-Barre, a plant which went out of business.

333 Mr. FELDMAN: May we have a lunch break now? We have a bunch of documents here we would like to go through before commencing on cross examination.

The COURT: Yes. Now, I want to advise all parties, however, that the time to devote to this taking of proof is limited, as I have already outlined to you, so we must keep it brisk. Now, if it is critical for you, we will recess until 2 o'clock and I hope that we will have a very full afternoon without breaks.

(Thereupon at 12:20 p.m. a recess was taken until 2 o'clock p.m.)

334 (Proceedings resumed pursuant to recess, commencing 2:00 p.m.)

Mr. MOORE: Your Honor, I have one or two more questions of Mr. Gorman.

The COURT: Yes.

Mr. MOORE: Mr. Gorman, please.

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

DIRECT EXAMINATION

By Mr. MOORE (Continued):

Q. Mr. Gorman, I think you testified, did you not, that over this long period of years you had never solicited from any newspaper the printing of color comic supplements?

A. That is correct.

Q. You never supplied any newspaper with color comic supplements other than through your contract with King?

A. Except the two that I mentioned back in 1925.

Q. Yes. Now, I think you have stated from time to time, have you not, in various conversations with unions and other people that Greater Buffalo was a competitor?

A. Yes, sir.

335 Q. Now, what did you mean by competition in that sense?

A. I meant we were competitors productionwise, so that I could supply King Features—so that I could supply

them with a price which would enable them to compete with other plants including Greater Buffalo.

Q. Did you consider, over these years, that your competition with Greater Buffalo arose solely out of your relationship with King?

A. That is right. We had no direct contracts ourself.

Q. Now, with reference to the work placed with you by King, printing of supplements for various newspapers, did you over these years ever exercise any control over those contracts?

A. None whatsoever.

Q. Did you have the right in your agreement with King to say where those contracts, where those supplements should be printed?

A. No, sir.

Q. Reverting back to International Color Printing Company prior to 1955, when it was owned by the Govin family, were dividends paid over the twenty-five or thirty years that the Govins owned this business?

336 A. Possibly \$100,000 all told.

Q. Over the thirty-year period?

A. Yes.

Q. Did Mrs. Govin Senior derive a salary from the company?

A. No, sir.

Q. Did Mrs. Scofield derive a salary?

A. No, sir.

Q. Did Mr. Govin draw a salary?

A. At various periods during the thirty-year period when he lived in Wilkes-Barre he drew a salary.

Q. What was the extent of that salary?

A. Approximately \$7,000 per year.

Q. Did he draw a salary after he left Wilkes-Barre?

A. No, sir.

Q. When did he leave Wilkes-Barre?

A. He left first in 1925, came back in 1935. He left again in 1945 and he hasn't been back since.

Q. Now, from your knowledge of this business would you say that the physical plant of International Color Printing Company was in better condition in 1960 than it was in 1955?

A. I think it was in better condition because it was producing twenty-five per cent more work per press hour.

337 Q. Were the facilities more efficient?

A. By reason of the fact that we had preregistry, yes.

Q. Was it making more money?

A. Yes, sir.

Q. And was it printing at Wilkes-Barre in 1960 more runs than it printed at Wilkes-Barre in 1955?

A. Yes, sir.

Mr. MOORE: You may ask.

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CROSS EXAMINATION

By Mr. FELDMAN:

Q. Mr. Gorman, I believe you testified earlier today that you were not concerned with the prices King Features charged newspaper customers, is that correct?

A. I testified that I knew nothing about them.

Q. I will accept that. Now, during the time that you had contract arrangements with King Features did these contract arrangements cover the charges which you made of King Features for supplements to be furnished particular newspapers?

A. Will you ask that question again?

Q. Yes. In your contractual relationship with King Features were the prices you were to charge King—were they covered in such contracts?

A. Generally speaking for a certain—for a bulk it was covered by the general contract, but when additional new business came up, then we would quote special prices to fit the case.

Q. Did there ever come a time when King Features requested you to absorb some of the transportation costs or reduce the price which you had previously agreed upon?

A. Yes, sir.

Q. And when such requests were made did King
339 Features indicate to you the competitive situation?

A. They indicated definitely that there was a competitive situation, but never did they tell me in detail what the competitive situation was.

Q. Did they ever indicate to you who was competing for the particular account involved?

A. Yes, sir.

Q. Did there ever come times when International reduced the price or absorbed part of the transportation costs?

A. Yes, sir.

Q. Now, I believe you testified earlier that you made the decisions in regard to the running and operation of International, is that correct?

A. Yes, sir.

340 Q. Now, you participated in the negotiations which preceded International's contract, the formal signing of a contract with King, is that correct sir?

A. Yes, sir.

Q. And who made the decision to enter into such negotiations at International?

A. I did.

Q. Prior to entering into such negotiations was there anything which prevented you as general manager of International from going out yourself or through salesmen and soliciting newspaper accounts?

A. At all times we were under contract which provided that we could not sell to anyone other than King Features.

Q. Did that contract ever come to an end?

A. The contract never come to an end. There was always an overlapping until finally—in fact, there was never a time when the contract actually came to an end.

Q. Well, how long was this contract?

A. For one period it was for three years, another time it was for two years, and then for a period of possibly fifteen years it was something on a six-month's notice of discontinuance.

341 Q. Well, was there anything which prevented you from terminating after six months?

A. No, sir.

Q. And so International could have gone out and solicited itself the particular newspaper runs?

A. Provided we had the finances to carry us through the period when we were soliciting.

Q. Well, regardless of the reason, there was nothing which disabled you from going out, is that correct?

A. If we cancelled the contract, no, sir.

Q. Now, during the period from 1926 to 1955 did International ever file a petition in bankruptcy?

A. No, sir.

Q. Did it ever file a petition in reorganization?

A. No, sir.

Q. How many employees did International employ during that period?

A. I can't answer that definitely. It varied from time to time and grew from say twenty employees at the beginning up to approximately three hundred twenty-five employees today. I

can't tell you how many employees we had on a stated time.

Q. Well, do you know approximately how many were in the employ of International at the time it was acquired by Greater Buffalo?

342 A. No, sir. I can't tell you that.

Q. Any approximation? Was it two hundred, three hundred?

A. More like three hundred.

Q. And were these people skilled workers?

A. Yes, sir.

Q. During the period from 1926 to 1955 did International always meet its payroll?

A. Yes, sir.

Q. And during that period did you receive a salary, sir?

A. Yes.

Q. And were you always paid during that period?

A. Yes, sir.

Q. Mr. Gorman, I show you at this time the Government's reply Exhibit number 9 and ask you whether you wrote that letter on or about December 5, 1957?

A. Yes, sir.

Q. Now, I believe you testified earlier today as to the liabilities at International which exceeded the assets at the time of its purchase by Greater Buffalo?

A. Yes, sir.

Q. Do you recall that, sir?

343 A. Yes, sir.

Q. And what was that amount, sir?

A. Approximately a hundred thousand dollars.

Q. Will you please read aloud this last paragraph?

A. "At the time Greater Buffalo took over I.C.P. Company current liabilities exceeded current assets by approximately \$30,000.00. As of now current assets exceed current liabilities by approximately \$60,000.00, so there has been an improvement here of about \$90,000.00, in the two year period. At the beginning of 1955, the excess of all assets over all liabilities before depreciation was \$1,340,351.90. As of now the excess is \$1,645,149.54 an improvement of about \$300,000.00 over the three year period."

Q. Now, were the statements contained in this letter correct at the time you wrote this letter on or about December 5, 1957?

A. The \$30,000.00 was an error because I think that at the time I wrote that letter I picked up a July, 1954 balance sheet rather than a 1955 balance sheet.

Q. Did you subsequently write a letter to Mr. Koessler pointing that out?

A. I never realized that there was any error or any
344 mistake until this proceedings.

Q. Now, I believe you testified earlier today that International and at least you had tentative plans prior to its acquisition by Greater Buffalo Press to build a plant in the Southeast, is that correct, sir?

A. Yes, sir.

Q. In regard to the Sylacauga plant, what, if anything did you do prior to the acquisition of International?

A. I visited the newsprint company at Coosa River regarding newsprint. I talked to some of the people in Sylacauga and I visited various other towns where I thought a location might be possible.

Q. How long did you spend in the Sylacauga area, sir?

A. That would be very difficult to say right now.

Q. Well, was it a month, was it six months, a year?

A. At no time more than two days.

Q. Now, when you went down and visited the Coosa River Newsprint Plant did you check the time it took to go from that plant to the various cities around there?

A. Yes, sir.

Q. And did you rent a car at that particular time?

A. I think I did.

345 Q. Did you look at the living conditions in the area at that time?

A. I probably checked on it, I don't remember particularly.

Q. Did you talk to local people, namely the Chamber of Commerce and other people?

A. Yes, sir.

Q. Now, at any time prior to the acquisition of International by Greater Buffalo, did International make any arrangements to get newspaper print in the south?

A. Yes, sir.

Q. Will you tell us about those arrangements?

A. I visited the Coosa River Newsprint Company in the middle of 1954, and was advised if a plant were established they would supply us with newsprint at a certain price. At the same time they told me they had, previously offered the same newsprint, the same amount, to other ready print companies. We agreed that we might go ahead with the plant provided we could get the newsprint.

Q. In regard to getting the newsprint, was any contract entered into between the Coosa River Newsprint Company and International, or anyone on behalf of International?

346 A. Yes, King Features or Hearst Publications, I don't know which—how you would express it.

Q. Prior to the acquisition of International by Greater Buffalo, was International assured of newsprint being supplied in that area?

A. Yes, sir.

Q. This was pursuant to the contract, is that right, sir?

A. Yes, sir.

Q. Did there come a time when you sent three men down to the Sylacauga area from International?

A. Yes, sir.

Q. Who were these men?

A. Tom Brennan, Roger Zadus, and Joe Clinton, if I remember correctly.

Q. How are these people characterized at International; as employees, or part of management?

A. One was a foreman of the machine shops, one was the purchasing agent, one was the assistant production manager.

Q. Who was the assistant production manager?

A. Joe Clinton.

Q. What was Mr. Brennan's function at International?

A. Purchasing Agent.

Q. And Mr. Zadus?

347 A. Head of the machine shop.

Q. How long did these people spend in the southeast, do you recall?

A. I can't answer that, a few days.

Q. Did they, to your knowledge, talk to people in the area there?

A. Yes, sir.

Q. What area did they cover, do you recall?

A. They went to Birmingham, and possibly one or two other towns, I don't recall.

Q. Is Birmingham near Sylacauga?

A. About fifty miles from Sylacauga.

Q. Did they talk to any people at Sylacauga?

A. Yes, sir.

Q. Did they speak with any contractors or people who would furnish supplies in the event a plant were to be built?

A. I don't know.

Q. Did you receive any memorandum from Mr. Clinton or anybody else?

A. I possibly did, I don't recall it.

Q. Mr. Gorman, I show you a memorandum dated January 24, 1955, which bears the typed name Joe Clinton on the back, and it states at the top, "A memorandum to Mr. Gorman (6 extras)". I ask you whether this is a memorandum
348 you received from Mr. Clinton in regard to the trip you just described by the three employees of International?

A. I think it was, or is.

Q. Were there any other memoranda sent to you, Mr. Gorman? Were there any other memoranda sent to you in regard to that trip?

A. Possibly.

Q. In addition to this memorandum, did you have any oral discussions with Mr. Clinton and the gentlemen upon their return?

A. Again, I say possibly.

Q. Now, Mr. Gorman, do you recall stating in the affidavit you submitted in connection with this motion, on Page 5, that at the time Greater Buffalo acquired International, you or International had virtually abandoned any plan to build a plant at Sylacauga?

A. Yes, sir.

Q. Do you recall now when Greater Buffalo acquired International?

A. I think it was in June of 1955.

Q. I show you, Mr. Gorman, Exhibit Number 6 in the Government's reply affidavit, dated May 13, 1955, and ask
349 you whether this is a copy of a letter you wrote on or about that date to Mr. Sternberger of the Hearst Corporation?

A. I think it is.

350 Q. Is there any question about it in your mind?

A. There can always be a question.

Q. But you—

A. Being a carbon copy, there is always a question, but I think it is my name. It looks like something I might have written.

Q. Who is Mr. Sternberger?

A. Mr. Sternberger is the purchasing agent in charge of newsprint for Hearst Newspapers.

Q. And was he the one who arranged the contract between the Hearst Corporation and the Coosa Plant in regard to supplying International with newsprint in the event the plant was to be built down there?

A. He represented Hearst in the arrangements.

Q. Now, will you please read the last sentence aloud?

A. (Reading:) We are fairly certain that we will have one press ready in March, the three presses by July 1, and we are fairly certain we will need about four thousand tons between July 1 and January 1, 1957, but as I said before, we cannot be absolutely certain when the presses will be ready.

Q. Now, when you wrote this letter on or about May 13, 1955, did you virtually abandon all plans to build a plant in the Southeast?

351 A. At about the same time that I wrote that letter, I wrote a letter to Mr. Nicht which was read here this morning—

Q. I want to know—

Mr. MOORE: Let him answer the question. I move to strike it out. Don't interrupt him.

Mr. FELDMAN: I think I am entitled to a yes or no answer.

The COURT: Answer yes or no, had you abandoned it at this time?

The WITNESS: No, sir.

By Mr. FELDMAN:

Q. When again did the sale of International take place?

A. June of 1955.

Q. Now, Mr. Gorman, do you recall stating in the affidavit you submitted in connection with the motion now before this Court that International prior to its acquisition did not have the financial resources to build a plant in the Southeast?

A. Yes, sir.

Q. Now, prior to the acquisition of International by Greater Buffalo, did you or anyone on behalf of International
352 ever go to a bank and seek to make a loan?

A. With a \$100,000 deficit—

Q. I think I am entitled to a yes or no answer—

Mr. MOORE: No. Now, let me just be heard, Your Honor. If he wants a yes or no answer to that question, I think perhaps he is entitled to it but he ought to let the witness explain it. When he asks a question in the manner it is testified that he has got \$100,000 deficit, no long-term contract, and does he go to a bank and ask them for a million dollars, if he wants a yes or no to that question—

The COURT: Well, will you answer that yes or no? I will give you ample opportunity to answer it in your own way later.

The WITNESS: Will you ask that question again, please?

By Mr. FELDMAN:

Q. Prior to the acquisition of International by
353 Greater Buffalo, did you or anyone on behalf of International go to a bank and attempt to secure a loan for financing a plant in the Southeast?

A. No, sir.

Q. Now, prior to the acquisition of International by Greater Buffalo, do you know whether an announcement was made by the people in Sylacauga that International had picked a site, namely, the Sylacauga area for its plant?

A. I don't think they did. I don't recall that they did, and if I may explain, I don't think they could possibly have done so because at that time we hadn't definitely picked Sylacauga.

Q. Now, do you recall at any time prior to the acquisition of International by Greater Buffalo of Sylacauga of the people at Sylacauga ever announcing that International had picked a plant?

A. They may have made an announcement. I wouldn't know about that.

Q. Do you recall them ever consulting you prior to ever making any announcement?

A. No, sir.

Q. Now, how much did International pay for press 2022?

A. \$32,500.

Q. Where did you buy that press? Strike that out.
354 Who on behalf of International purchased the press for Greater Buffalo?

A. The arrangements were made by Tom Brennan.

Q. And from where did you make the purchase?

A. From the Baltimore News Post.

Q. And who contacted the Baltimore News? Mr. Brennan?

A. Mr. Brennan.

Q. Did Mr. Brennan go down to Baltimore and look at the press prior to the time it was purchased?

A. I think he did.

Q. Did anyone ever go down to Baltimore and look at that press, sir?

A. Yes, sir.

Q. Who?

A. I did, Roger Zalus, possibly one or two others. I do recall I went down there and Roger Zalus went there.

Q. After the press was purchased, who made the arrangements in regard to packing it and shipping it to the Wilkes-Barre plant?

A. I don't remember definitely but I think possibly it was Roger Zalus.

Q. And when the press arrived in Wilkes-Barre, did any work have to be done in the place where the press was eventually set? Would beams have to be set and other work
355 done in connection with it?

A. I think you put a concrete floor in it. I am not sure definitely what work was done. I can't answer that question.

Q. And to the best of your recollection who worked in setting up the place for the press 2022?

A. Setting up the place? You mean rebuilding the floor?

Q. Yes.

A. If it was a concrete floor, I am not sure about it, but it would have been done by some outside contractor.

Q. And was International reimbursed for the money expended in that connection?

A. No, sir, because the floor would be good for all the time after that.

Q. Now, after the press arrived and work was done on it, who supervised the actual work done in connection with equipping and setting up that press at International?

A. Roger Zalus carried out the instructions which came from Buffalo.

Q. Now, did Robert Zadus to your knowledge ever have discussions with people at Buffalo and make suggestions in regard to how press work should be carried on?

356 A. He may have but I don't know that.

Q. Did Robert Zadus report to you?

A. Yes, sir. May I qualify that?

Q. Yes.

A. He didn't report to me very often.

Q. Well, were you informed as to the progress being made on the press?

A. Not particularly.

Q. Now, prior to press 2022 arriving in Wilkes-Barre, had International made any plans in regard to relocating material for the southern plant which was going to be constructed?

A. Prior to the time of my position with Greater Buffalo, we had talked about moving presses from Parsons to the Sheldon and possibly moving Peoria presses to the south eventually and also some moving of stereotype equipment but most of that was eventually moving Parsons presses to Wilkes-Barre regardless of what was done in the south.

Q. And was any money expended in that connection?

A. Yes, sir.

Q. How much, do you recall?

A. No, sir.

Q. Was it over \$10,000?

357 A. I don't know.

Q. Now, after the purchase was made of press 2022, do you recall how that press was carried on the balance sheet of International Color Printing Company?

A. Under "Other Assets".

Q. Was it listed under accounts receivable at all, sir?

A. In July of 1960 it was listed under accounts receivable.

Q. That was the first time, is that correct?

A. Yes.

Q. And when did the press arrive at Wilkes-Barre, sir?

A. About 1956. We were told at that time that we would eventually be reimbursed.

Q. But, anyway, from 1956 until July 1960 it was not listed on the balance sheet of International as an accounts receivable, is that correct, sir?

A. That's right.

358 Q. When was International paid for press 2022, was it before or after the commencement of this law suit?

A. Prior to the commencement of this——

Q. Motion?

A. Prior to the commencement of this motion.

Q. It was after the commencement of this law suit, is that right?

A. I don't know when the law suit started.

Q. Do you remember the date?

A. About January of 1961.

Q. When was International billed for this press?

A. We billed Buffalo starting in July—when was International?

Q. When was International billed for the press?

A. Billed for the press?

Q. That is right, when did International bill Greater Buffalo for the press?

A. Starting in July of 1960.

Q. When you say they were billed for the press, does that include all the labor and services and parts which had been purchased by International in connection with the press?

A. All except the time it took for putting the press up. We were using men we didn't have on regular work.

359 Q. What is that amount again, sir?

A. I don't know.

Q. Was it over one hundred thirty thousand dollars?

A. The total amount?

Q. The total amount.

A. One hundred thirty thousand dollars.

Q. Did International ever receive any interest for that amount from Greater Buffalo?

A. No, sir. I might point out, all the time we were waiting, that one hundred thirty thousand dollars was due us, we had more money than that on deposit.

Q. I am talking about one hundred thirty thousand dollars.

A. There was no interest paid on it.

Q. When was the great bulk of the work done at International on press 2022?

A. My recollection, my best recollection is that it was 1959.

Q. Mr. Gorman, I show you Government's Exhibit 15A, which is dated December 5, 1957, and entitled, "Cost of Unusual Repair Work in Progress or Completed during the Period

1-1-55 to 10-31-57. 34 months." It consists of two pages, and on the second page it has in the right hand corner, 360 "Prepared by J.J.G.", underneath it, the date, 12-26-57. I ask you whether you prepared these two sheets?

A. I definitely didn't prepare them.

Q. Did you read them at all, sir?

A. I don't remember.

Q. You don't remember that at all?

A. No.

Q. Mr. Gorman, referring back to the heading on the second page, "prepared by J.J.G.", does this refresh your recollection at all as to whether or not you prepared this document?

A. I wouldn't be able to prepare that.

Q. Was it prepared for you by anyone?

A. Possibly by someone else. Personally, I wouldn't be able to prepare it.

361 Q. Now, referring to the first page, under the heading "Job Title" which says "Press 2022" and then going to the righthand column which says "Total Job Cost to 10-31-57" will you state the amount which appears there?

A. \$110,374.58.

Q. Will you please tell us again the total amount which Greater Buffalo paid for press 2022?

A. \$130,000.00 up till—this year.

Q. Now, do you still say that most of the work on press 2022 was done in 1959?

A. To the best of my knowledge, yes. That is my recollection. It was 1959. There was some work done earlier than that, but exactly how much I don't know.

Q. And you still say so and it is still your testimony with Exhibit 15-A before you, is that correct?

A. Yes, that is correct. That is my recollection.

Q. Now, prior to 1935, how many maintenance men did International have in its employ? I am talking about the period.

A. About twelve prior to 1955.

Q. And at the time of the acquisition of International how many maintenance men did it have?

362 A. Still about twelve.

Q. Now, did all these people, namely—or twelve people at some time or other work upon the construction or erection of press 2022, at one time or another?

A. I couldn't answer that definitely. Possibly some of them did. Not possibly. All of them did. I can't say definitely how the work was divided.

Q. Am I correct that you testified earlier today that the people who worked on press 2022 did so in their spare time?

A. What I mean by "spare time" is we had six more men in 1959 than we had before 1955 and after the preregistry job was done, then we didn't have any immediate jobs. So we had the crew there anyhow, so we used them on that press.

Q. Referring now to 1957 and to document 15-A which I just showed you, in that period, namely 1957, how many maintenance men did International have in its employ?

A. The number of men increased gradually from 1955 up till 1960. We increased by about five men. How many we had at a given period in that five-year period, I don't know.

Q. But at least by 1957 five more men or additional
363 men were not employed by International, is that correct, sir?

A. What was that again?

Q. By 1957 the full total of five men or additional men were not employed by International, is that correct?

A. I don't know whether the five men were there in 1957 or whether some of them came later.

Q. Now, I believe you started to explain what you meant by "spare time". Do you mean by "spare time" that these people or maintenance men worked on press 2022 outside of their regular working day?

A. No, sir.

Q. In other words, all this work was done during their regular working day, is that correct, sir?

A. Yes, sir.

Q. And during that period of time was there any other maintenance work which these people engaged in?

A. Yes, there was a considerable amount of other maintenance work.

Q. At International is there always maintenance work?

A. Yes, sir.

Q. Available?

A. Not enough to keep eighteen men busy at the same time.

Q. But there is always maintenance work available
364 is that correct, sir?

A. Yes, sir. When all the presses are running, it is impossible for all of them to work.

Q. Now, did the men who were employed in constructing press 2022—were they informed by you or anyone on behalf of International that they were working on this press in their spare time?

A. No, sir.

Q. They knew nothing about that at all?

A. No, sir.

Q. Did you tell anyone the men were to work on the press only in their spare time?

A. We told them that had to come secondary, that was secondary to anything else we were doing.

Q. Whom did you tell that to?

A. Tom Brennan.

Q. What about Mr. Zadus?

A. Well, he in turn, I presume, told Zadus. I had very little contact with Zadus direct.

Q. During this period of time did International farm out any work, maintenance work or machine work?

A. Yes, sir.

Q. And what company did it farm the work out to?

A. Probably several companies, but I remember one
365 in particular, Hess & Barker, probably several other companies.

Q. Where is Hess & Barker located?

A. Philadelphia.

Q. What work did they do for International?

A. They did the opening up of the cylinders to provide for the five-plate wide press and what else they did in particular I don't know.

Q. No, who made the arrangements with Hess & Barker to work on press 2022?

A. We did.

Q. And prior to that time had you had dealings with Hess & Barker?

A. For many years.

Q. Now, I believe you testified earlier today that six men went down to Sylacauga and worked on press 2022, is that correct, sir?

A. Yes, sir.

Q. Do you know whether an attempt was made to hire local machinists or maintenance men in the Sylacauga area?

A. I don't believe so.

Q. And where did you get that information?

A. From Joe Clinton.

Q. Now, when these men went down to Sylacauga,
366 who was in charge, who was their supervisor?

A. Roger Zadus.

Q. And was Roger Zadus at that time in the employ of International?

A. Yes, sir.

Q. And was there anyone down there above Roger Zadus?

A. Yes, sir, Joe Clinton.

Q. Was Joe Clinton in full charge down there?

A. Yes, sir.

Q. Whom did Joe Clinton report to?

A. He reported to me in the first instance, but then he started reporting directly to Buffalo.

Q. Now, did Joe Clinton consult with you during the period of time he was down there?

A. Very little.

Q. Well, didn't he write you memoranda as to the progress being made?

A. Probably from time to time, but he didn't consult with me because I knew nothing about the operation.

Q. What about the stereo-type equipment? Did you have discussions with him about that?

A. I may have had briefly, but not to any extent.

Q. But did you offer him any advice at all in regard to the stereo-type equipment?

A. If I did, I was very foolish because he knew more
367 about than I did.

Q. Did you ever have any discussions with him whereby it was decided that certain equipment was to leave International and be sent down to Sylacauga?

A. We sent certain small parts over and above the press to Sylacauga.

Q. And these parts you just spoke about, were they
368 sent after discussions you had with Joe Clinton?

A. Probably.

Q. How long was Joe Clinton down at Sylacauga?

A. About eighteen months, I guess. I am only guess.

Q. During that time, was he on the payroll of International?

A. During the first few months.

Q. By "few", how many months?

A. I don't know. I can't answer that definitely.

Q. Would it be three months?

A. Possibly, possibly longer than that. I don't know remember.

Q. When did he first go down there?

A. I think about a year ago last June. I don't know po

Q. When the six maintenance men went down to Syl was he then on the payroll of International?

A. Yes, sir.

Q. And was International repaid for his services?

A. No, sir, not until later.

Q. When was International repaid?

A. Possibly about a year ago. I can't answer definit

Q. Was that after or before this law suit w
369 menced?

A. I think it was before.

Q. You don't recall how soon before?

A. No, sir.

Q. Now, Mr. Gorman, you stated, did you not, a littl ago that International never had any competitors, is tha prior to the acquisition by Greater Buffalo?

A. Price wise, we never had any competitors. We wer ing directly with King. King had all the contracts.

Q. Prior to the acquisition of International by C Buffalo, did you ever visit any independent color comic ing plant?

A. Many times.

Q. And did you report your findings or observations t Features Syndicate?

A. Yes, sir.

Q. Will you enumerate some of the plants you visited

A. I think I visited all of them.

Q. Well, suppose you name them.

A. Southern Color; Wilmington—Star Color Printing pany, Wilmington; Acme at San Bernardino; Eastern Printing Company of Waterbury. I don't know whether

named them all or not. By the same token, we were
370 visited by people from those plants.

Q. Now, in regard to the names you mentioned, would these be significant independent color comic supplement printers that you know of?

A. Yes, sir. You are asking me about these names; Greater Buffalo was a significant color printing company.

Q. When you visited these plants, did they admit you freely through the plant?

A. Yes. I had lunch with Mr. Smith on a number of occasions at his plant. I had lunch with Johnny Enright in Waterbury.

Q. What was the story with Greater Buffalo?

A. I didn't know Koesler.

Q. Did you ever visit the plant prior to the acquisition?

A. Back thirty years ago.

Q. In other words, thirty years prior, or about 1925 you visited the plant, is that correct, sir?

A. Thirty years is not 1925.

Q. From 1955?

A. I visited some time in the 30's.

Q. Some time in the 30's you visited the plant?

A. Yes, sir.

Q. You never visited the plant of Greater Buffalo
371 since some time in the 30's, is that correct?

A. No, sir.

Q. When did you visit the plant—I will withdraw that—from some time in the 30's until June 1955, did you visit the plant of Greater Buffalo?

A. I have no recollection of so doing.

Q. Now, when did you visit Southern Color Print, do you recall?

A. On various occasions. Just when, I don't know.

Q. Well, the last time, do you recall?

A. I don't know.

Q. Was it in the last ten years?

A. Yes, sir.

Q. What about Star, was that in the last ten years?

A. Yes, sir.

Q. What about Acme?

A. Yes, sir.

Q. Now, who handles the labor negotiations on behalf of International?

A. I do.

372 Q. How many unions do you have representing the employees of International?

A. Five.

Q. And in the past—

A. Six.

Q. Six?

A. Yes.

Q. Have you sat down with the representatives of the various unions and negotiated the labor contracts?

A. Yes, sir.

Q. In the course of those negotiations, do you recall ever having stated to these people that International had competitors?

A. Yes.

Q. Now, Mr. Gorman, do you recall in your affidavit, which you submitted in connection with this motion that you stated on page 15 that International was a sub-contractor?

A. Yes, sir.

Q. Prior to that time that you made this affidavit, do you recall ever on any other previous occasion describing International as a sub-contractor?

A. No, sir.

Q. Was the idea to use the word "sub-contractor", yours or was that suggested to you, sir?

373 A. Possibly, it was suggested.

Q. Going back one moment, Mr. Gorman, I show you Government's Exhibit 10A, which is dated April 22nd, 1955, as part of the Government's case, and ask you whether this is a copy of a letter sent by you to Mr. Jack Nealeans, Secretary of the Chamber of Commerce at Sylacauga, Alabama?

A. Yes, sir, I think it is.

Q. Your answer is yes, is that right?

A. Yes.

Q. Will you please read the first sentence of that letter?

A. "I am writing you pursuant to our telephone conversation, and as I have told you, we have definitely selected Sylacauga as the location for our southern printing plant and that you should go ahead with the purchase".

Q. Does that refresh your recollection as to whether or not anyone at Sylacauga announced that International had picked the Sylacauga area as its site for its southeastern plant?

A. I don't know of any announcement.

Q. At any rate, this document does not refresh your recollection?

374 A. No.

Q. Now, Mr. Gorman, I believe you testified that since the acquisition of International, International has continued to operate as a separate company or corporation, is that correct, sir?

A. Yes, sir.

Q. Did there come a time since 1955 when runs were transferred from International to Lufkin, Texas?

A. From Peoria to Lufkin, Texas.

Q. Were any runs transferred from the Wilkes Barre plant of International to Lufkin, Texas?

A. The only runs I recall, I can't be too positive about this, is runs which King Features lost to Buffalo and then transferred them to Lufkin, Texas.

Q. And in those cases, who made the decision as far as you were concerned to transfer the runs to Lufkin?

A. In most cases, I had nothing to do with it. We lost the runs.

Q. Who told you to transfer?

A. We were simply ordered to discontinue the plant. Greater Buffalo simply put their own orders in because they took the work.

Q. Were any runs which King Features had the contract to, which were transferred from the International plant at
375 Wilkes Barre to Lufkin?

A. I think possibly one of them, Eastern Post.

Q. And who made the decision in that case to transfer the run there?

A. Either Mr. Nicht made it, or he made it after talking to me.

Q. Now, in conducting your labor negotiations since 1955, Mr. Gorman, have you ever had to submit a proposed labor contract to Greater Buffalo for approval?

A. I never submitted a proposed labor contract. I have talked to Greater Buffalo on very, very rare occasions about the proposed contract, but I never submitted the contract.

Q. Were you always able to sign a contract without consulting with Greater Buffalo?

A. Yes, sir.

Q. Do you recall ever telling union representatives at International in Wilkes Barre that you must first seek the approval of Greater Buffalo before signing a contract?

A. I don't recall telling them that, no, sir.

Mr. FELDMAN: I have no further questions.

The COURT: Gentlemen, the other parties, do you wish to examine at this time, to cross examine?

376 Mr. CLIMENKO: No, thank you.

Mr. HAYNES: No, thank you.

The COURT: All right, redirect examination.

REDIRECT EXAMINATION

By Mr. MOORE:

Q. Well, now, this word "sub-contract", whether it was suggested or not, correctly describes the relationship that you had with King, doesn't it?

A. That is my belief.

Q. Getting back to the question of the deficit—I think I will mark this for identification.

The CLERK: D-1 marked for identification.

(Whereupon a document was marked D-1 for identification.)

By Mr. MOORE:

Q. I show you a copy of a letter dated October 16, 1957, which is marked Exhibit D-4 for identification, which purports to be from Mr. Joseph J. Gorman to Mr. Walter Koesler, and first of all, I ask you if you recall that this is a letter that you wrote?

A. I believe it is.

377 Q. Now, directing your attention to the fourth paragraph, approximately the sixth line, I note in this letter that you state that at the end of August, 1955, current liabilities exceeded current assets by one hundred and thirty thousand dollars. Do you recall writing that letter?

A. Yes, sir.

Q. And this is a letter written some two or three months before the letter that Mr. Feldman called to your attention, is it not?

A. I don't remember the date of the letter that Mr. 378 Feldman referred to.

Q. When you first came into possession at Wilkes-Barre of Press 2022 I think you testified you carried it on your books as "Other assets", is that right?

A. That's right.

Q. And you did not carry it in your account for machinery and equipment?

A. No, sir.

Q. Weren't all the presses that you had at Wilkes-Barre which you were using at Wilkes-Barre carried under your machinery and equipment account?

A. Yes, sir.

Q. And the account for other assets also contained the Sheridan machines that you bought for Greater Buffalo, didn't they?

A. I believe it did.

Q. Now, when you sent an invoice to Greater Buffalo for the work done, the material and the cost of press 2022 in July of 1960, you changed the listing of the account in your books, didn't you?

A. Yes, sir.

Q. And after that it appeared as an accounts receivable?

A. That's right.

Q. And since it hadn't been invoiced, it couldn't be listed as an account receivable prior to that?

379 A. No, sir.

Q. Now, in this matter of interest, did Greater Buffalo Press charge you interest on the payments they deferred for you when you were doing pre-registry?

A. No, sir.

Q. These extra machinists you spoke of, the six machinists, were they hired for the pre-registry work?

A. We hired six additional men primarily for the pre-registry and rebuilding work of our own presses.

Q. And you have kept them on since?

A. They have been on since.

Q. Now, for the work done on press 2022 outside of material and the cost of the press, Greater Buffalo Press has paid International in excess of \$100,000.00 haven't they?

A. Yes, sir.

Q. Now, finally, in your business experience do you know of any bank that you could have gone to prior to July of 1955 to borrow a million dollars when you didn't have a long-term contract and had a deficit in working capital?

A. No, sir, I don't know of any such bank.

Q. Now, this Coosa River Newsprint matter, didn't
380 Coosa River insist on a contract with Hearst?

A. They insisted on a contract with Hearst.

Q. In other words, you couldn't get a contract with Coosa yourself?

A. We couldn't get a contract with them, no, sir.

Q. And that contract had never been an asset of International because it was held by Hearst, wasn't it?

A. That's right, sir.

Q. Do you know whether Greater Buffalo has ever succeeded to that contract?

A. No, sir.

Q. Do you know whether they have or not?

A. No, I don't.

Q. Do you know whether the contract is still in existence with Hearst?

A. I haven't heard anything about the contract in several years. I don't know what its standing is.

Q. Now, this stereo machinery that was moved from Parsons to Sheldon, that, as it turned out, had to be done anyway because of the pre-registry, didn't it?

A. That is correct.

Q. So that was something you had to, eventually had to do anyway at International?

A. That is correct.

381 Q. And of course with the collapse of the floor under press 2022 a lot of the work that had been expended on the press was lost?

A. That is correct.

Q. Now, going back to the inquiry Mr. Feldman made about your letter to Mr. Sternberger of May 13, 1955, which is identified as Government's Reply Exhibit 6; just two months prior to that you had written Mr. Nicht of King Features Syndicate that you could not commit yourself to the erection of a building until you had a long term contract at a price that would enable you to amortize within a reasonable number of years?

Mr. FELDMAN: Where is that coming from?

Mr. MOORE: Your reply Exhibit 5, introduced on the part of the Government case in support of their allegation that the problem of financing was not a problem, and identified on his direct examination.

By Mr. MOORE:

Q. At the time you wrote this letter of May 13, 1955, you hadn't been able to negotiate a long term contract, had you?

382 A. That is right.

Q. And you hadn't been able to secure any financing?

A. That is correct.

Q. That condition continued and existed at the time that the stock of International was acquired by Greater Buffalo?

A. That is correct.

Mr. MOORE: I have no further questions.

The COURT: Are you through, Mr. Feldman?

Mr. FELDMAN: In one minute, Your Honor.

RECROSS EXAMINATION

By Mr. FELDMAN:

Q. Mr. Gorman, I show you Government's Exhibit Number 10, which is annexed to the main or first affidavit in support of the Government's motion here, and ask you whether you wrote this letter, a copy of it being before you, which is dated May 14, 1956?

A. Yes, sir.

Q. Referring now to page three; will you read this paragraph here?

A. "Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company produces over sixty-three million four-page sections 383 weekly. No other printing company produces more than six million weekly and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the supplements now produced by International. Greater Buffalo differs from International in a number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers."

Q. Was that statement correct when you made it on or about May 14, 1956?

A. I presume so.

Q. Mr. Gorman, the contract with Hearst, which you just spoke about when being interrogated by your attorney, when was that contract entered into?

A. Are you talking about the newspaper print contract?

Q. No, about the contract with Hearst?

A. It was in the fall or late summer of 1955.

Q. Isn't it a fact it was entered into in July 1955?

A. The fall or late summer.

Mr. FELDMAN: I have no further questions, Your Honor.

The COURT: Anything more, Mr. Moore?

Mr. MOORE: No, Your Honor.

384 The COURT: You may step down, Mr. Gorman.
(Witness Excused.)

JOSEPH CLINTON, called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

The CRIER:

Q. What is your name?

A. Joseph Clinton.

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Clinton, where do you reside?

A. Sylacauga, Alabama.

Q. And how long have you lived in Sylacauga?

A. I have been there since May, 1960. I was there previous. I was there previous to May. I went there in March and stayed for about three weeks.

Q. Would you speak a little louder.

A. I went there in March of 1960 and stayed there for about three weeks and I came home for a couple of weeks and went back in April and stayed about three weeks, and I went in May and I have been there since.

Q. And what is your position?

A. I manage the Dixie Color Printing Company.

Q. You are the general manager there?

A. Plant manager.

386 Q. And can you tell us now what the condition of the Dixie Color Plant at Sylacauga is as to its state of readiness?

A. The equipment is all in place and all ready to run and the building is all finished and it is air conditioned and it is

fully equipped with a railroad siding and docks are in, and we have mostly all the supplies we need and the press is ready to run, and the stereotype department is ready to run. We can go into production in a matter of a few days.

Q. Now, will you describe the plant in itself? First of all, where is it located? Is it within the city limits?

A. It is within the city limits of the City of Sylacauga, which is a rather small town, about three or four blocks from the center of town.

Q. Would you speak just a little slower.

A. We are about two blocks from U.S. highways that go north, south, east and west. We have an L&M railroad siding coming into the plant off a spur line. We are available to the Central and Georgia Railroad. I would say we are within about two hundred and fifty miles of three newsprint mills in Tennessee and Alabama. We are probably within a five hundred
387 mile radius of somewhere between seventeen and twenty million four-page section Sunday newspapers.

Q. Now, did you say how large the plant was?

A. The plant is forty-five thousand square feet, and has loading and unloading docks and about three and a half acres of land.

Q. You said you were on a railroad siding?

A. We are on a railroad siding.

Q. Now, do you have any contracts or commitments, for newsprint at the present time?

A. None that I know of.

Q. And do you know whether or not newsprint is readily available at the present time?

A. I believe the market is such that you can buy newsprint without any trouble.

Q. What are the plants that you refer to?

A. Coosa River Newsprint Company has a newsprint plant about twelve miles from our shop. International Paper Company has a plant in Mobile, which is about two hundred and thirty miles and the Bowaters Paper Company has a plant at Cleveland, Tennessee, which is about two hundred and twenty miles.

Q. You were formerly employed by the International
388 Color Printing Company?

A. Yes, sir.

Q. And when did you go to work there?

A. In 1936.

389 Q. How old were you at that time?

A. Twenty.

Q. And what was your job?

A. Stenographer.

Q. Then carrying on through the years, what other jobs did you do at International?

A. Oh, I have been in charge of the billing, shipping, had something to do with shipping and billing, production. I finally wound up being assistant production manager.

Q. Now, do you recall the time that Greater Buffalo Press acquired the stock of International?

A. Yes, sir.

Q. And did you know about the acquisition of stock prior to the time it occurred?

A. No, sir.

Q. Now, subsequent to the acquisition of stock, was there any change in the management at International?

A. No, sir.

Q. Was there any change in the operations at International?

A. In the physical operations?

Q. Yes.

A. Yes, sir.

390 Q. Will you describe briefly what changes were effected in the physical operation?

A. Well, I know we were ordered by Mr. Gorman to put into effect the pre-registry systems that they were using in Buffalo, the scheduling systems. I was sent to Buffalo by Mr. Gorman.

Q. If you will slow down just a little bit.

A. I was sent to Buffalo by Mr. Gorman to check over their methods of registering and scheduling, which I did, and eventually we put them into practice.

Q. Now, this change to pre-registry involved physical changes in the plant, did it not, or machinery?

A. Yes, sir.

Q. Where did the plans and drawings come from?

A. From Buffalo.

Q. What was the effect the eventual effect on operations of this change in pre-registry?

A. We had a substantial increase in production. Our production prior to the acquisition ran around fifteen thousand four

page sections per press, what we called a single width press hour. It eventually went up to about twenty thousand.

Q. Did that change in efficiency result in an increase in earnings for the company?

391 A. Yes, sir.

Q. Now, do you recall going to Sylacauga early in 1955?

A. Yes, sir.

Q. What was the occasion of your trip?

A. Mr. Gorman sent us south, Tom Brennan and Roger Zardus and I, to look over sites for a possible printing plant that we might put in the south somewhere.

Q. Now, at that time did you visit sites other than Sylacauga?

A. Yes, sir.

Q. Where else did you go?

A. We stopped in Atlanta, and looked over different kinds of buildings put up by different contractors, we went to Birmingham and looked, we went to Talladaga and to Sylacauga.

Q. Prior to the time the stock of International was acquired by Greater Buffalo, do you know of any definite commitment that was ever made on behalf of International to build a plant in Sylacauga?

A. No, sir, no definite commitment that I know of was made.

Q. Now, were there tentative plans?

A. Yes, sir.

392 Q. And can you describe briefly what those plans were?

A. Yes sir. We had plans drawn up by the contractor in the south for a twenty-five thousand square foot building into which we had planned to put three of the presses that were located in the Parsons plant.

Q. Now, in connection with that change in your facilities in Parsons, what else were you going to do at Wilkes-Barre?

A. We were going to send the other two Parsons' presses—there were five presses in the Parsons plant all told—we were going to send the other two presses into the Sheldon plant with the stereotype department, and shut down the Parsons plant. We also thought about shutting down the Peoria plant at the same time, because of the—part of the Peoria workers also were going to move south. The balance of the Peoria work we planned on bringing to Wilkes-Barre.

Q. Now, what did that plan involve as to the moving of production from Wilkes-Barre to a southern plant?

A. As I remember it, there were about eight million, we figured there were about eight million four page standards we had that could be printed in the southern plant. That was the total.

394 Q. And that would have involved a production of eight million at Wilkes-Barre?

A. Yes, sir.

Q. Do you know what prevented the tentative plans that International had for a southern plant from materializing?

A. From materializing?

Q. Yes.

A. Mr. Gorman couldn't get the contract with King Features that would allow us to pay for the plant.

Q. Do you know how much money approximately would have been involved in the construction of a plant in the south at that time when you were planning in early 1955?

A. I believe for the twenty-five thousand foot, square foot plant that we had the plans drawn on, it seems to me we had a contract bid for something around \$200,000.00 for that particular building.

Q. Did you have figures on machinery?

A. I don't remember. Mr. Gorman made estimates but I don't remember what they were.

Mr. CARLSON: We are still having difficulty hearing the witness.

395 Mr. MOORE: If you will speak up; lean up further toward that microphone.

By Mr. MOORE:

Q. Subsequent to the acquisition of the International stock by Greater Buffalo, did there come a time when a determination was made to build a plant in Sylacauga?

A. Yes, sir.

Q. And when was that?

A. In the early fall of 1955.

Q. And did you have anything to do with the plans that were drawn for this projected plant in Sylacauga?

A. Yes, sir.

Q. Well, what were the plans, what were the original plans?

A. Mr. Gorman told me we were going to go ahead with the southern plant. That was after the acquisition—

Q. Could you come forward and speak a little slower?

A. He told me we were to go ahead with the southern plant; we had to follow the Lufkin plans. Lufkin is the Southwest color plant in Texas. He told me to obtain a set of the Lufkin plans, which I did. So the Lufkin plans amounted to
 396 forty-five thousand square feet which was too large for the original plot of ground we had been figuring on. So I went back to the people in Sylacauga with whom we had been dealing, to see if there was any more land available. Eventually I set the Lufkin floor plan onto what would be an available plot, what might be available, to see how it fitted and went from there.

Q. So the plans for the Sylacauga plant, as it now exists, were in fact patterned after the Greater Buffalo Lufkin plant?

A. Yes, sir.

Q. Now, who did the engineering on the Sylacauga plant?

A. On the building itself?

Q. Yes.

A. Originally we had engineering work done by D & B Fabricating Company, who were a contractor down there, but the final engineering for the building was done by Armco. It was the people from whom we bought the building.

Q. Now, how was the land acquired for this plant?

A. The land was donated by the people of Sylacauga.

Q. And to whom was title conveyed?

A. Greater Buffalo.

397 Q. Do you recall when that was?

A. That was in July of 1956.

Q. And title was never conveyed to International?

A. No, sir.

Q. Now, when was Dixie Color formed?

A. It was incorporated in April, 1957.

Q. And that is an Alabama corporation?

A. Yes, sir.

Q. Are you an officer of Dixie Color Corporation?

A. Yes, sir.

Q. Are you a director?

A. Yes, sir.

Q. Who owns all of the outstanding stock of Dixie Color?

A. Greater Buffalo Press.

Q. Has anybody other than the initial subscribers ever owned any of the outstanding stock of Dixie?

A. Not to my knowledge.

398 Q. Now, do you know whether or not the real property upon which this plant stands was conveyed to Dixie?

A. It was conveyed to Dixie by Greater Buffalo Press. I know that, yes.

Q. Do you know when?

A. Shortly after Dixie Color was incorporated.

Q. Was it sometime in 1957?

A. Yes, sir.

Q. So the title to this real property, the plant and everything at Sylacauga is in Dixie Color?

A. Yes.

Q. Now, had Dixie Color, how has Dixie Color been financed to date?

A. By Greater Buffalo Press.

Q. How is that financing done, advances made or loans?

A. Advances.

Q. And do you know approximately how much has been advanced to Dixie by Greater Buffalo?

A. I understand the total is about something over \$900,000.

Q. Now, are you familiar with press 2022?

A. Yes, sir.

Q. Do you know the purpose of the acquisition of press 2022?

A. Yes, sir.

399 Q. And what was it acquired for?

A. It was acquired to be erected at Sylacauga.

Q. And are you familiar with the rebuilding of that press?

A. Yes, sir.

Q. And where was the work on rebuilding the press done?

A. Part of the work was done in Philadelphia and part of it was done in the Wilkes-Barre Plant of International Color and the bulk of it was done at the Dixie Color Printing.

Q. Now, do you know where the plans came from for the rebuilding of this press?

A. The major plans came from Greater Buffalo.

Q. And do you know when those plans for that press were completed?

A. No. When you say plans like that, there was no one set of plans to cover the entire project.

Q. Well, let me put it this way then: Do you know whether or not the plant at Sylacauga was designed specifically to house press 2022?

A. Yes, sir.

Q. Now, I will elaborate on that. Can you describe the type of pit that was built into the Sylacauga Plant?

A. Yes. Each printing press requires its own peculiar
400 plant or pit so far as dimensions are concerned for the undercarriage of the press, for the drive, and what not and one press won't normally fit into an odd pit and the pit for press 2022 was included in the original design of the building and the pit was installed with the original foundation of the building, the pit for press 2022 and the pit for press 1812.

Q. Now, do you know when the plans for that pit, the drawings were completed?

A. The drawings were completed and sent out for bid in July of 1956, so the drawings for the pit were finished before that time.

Q. And those drawings included the design of a pit built right around this press 2022?

A. That's right.

Q. Now, you mentioned that there was another press 1812?

A. Yes, sir.

Q. Let me ask you this: Do you have any other press down at Sylacauga now?

A. No, sir.

Q. Well, what is press 1812 to which you refer?

A. Press 1812 was located in the press room of the Buffalo
401 Plant on Grote Street and the beginning when we were advised that we could go ahead with the Sylacauga plant, the first thing we were going to put down, we were told we would put down there was Buffalo Press 1812, so we got ready to prepare a pit for it and the first pits we actually put in, both pits for 1812 and 2022 were put in with the foundation of the building but we had the contractor finish the pit for 1812 first because our understanding was that that was going to be the first press available.

Q. But as it developed, the first press available was 2022?

A. That's right.

402 Q. Now, what is the capacity of this Sylacauga plant?

A. As it stands now, sir?

Q. Yes.

A. I think we could print nine to ten million four page standards per week.

Q. And what would that entail operationswise on a shift basis?

A. Three shifts a day and six shifts a week.

Q. In this printing business are continuous or semicontinuous operations of this type common?

A. Yes, sir, on account of the heavy investment.

Q. And in general, is it the experience in the printing business that partial, just one shift operations, are not profitable?

A. That's right, sir.

Q. Now, from your knowledge of the business, and from your knowledge of this plant, of which you are the general manager, in your opinion is it possible to operate the Sylacauga plant as it now stands on a production of four million fours per week and show a profit?

A. No, sir.

Q. Now, what in your opinion is the minimum production of fours which will enable the facility to operate at a profit?

A. I don't think we could get by for much less than 403 seven and a half maybe.

Q. I suppose as your production decreases, your costs increase, don't they, proportionately? I mean, your losses increase proportionately?

A. That's right, sir, because a lot of overhead would stay the same.

Q. So, it is really a disproportionate decrease. I used the wrong word.

A. Yes, sir.

Q. Now, an operation of three million four hundred thousand fours per week would be approximately a little more than one third of capacity, is that right?

A. Just about one third, that's right, sir.

Q. And what would that mean as to hours of operation basically?

A. Forty-eight.

Q. Forty-eight hours per week?

A. Yes, sir.

Q. As against a full operation of how many hours per week?

A. One hundred forty-four.

Q. Now, you were familiar with the operation of the Peoria plant of International?

404 A. Yes, sir.

Q. And what was their printing, average printing per week?

A. They ran from five million to six million four page standards per week.

Q. In your experience did Peoria ever operate at a profit?

A. They never operated at a profit, I am sure.

The COURT: We will take a short recess.

(Whereupon a short recess was taken.)

405 (Proceedings resumed pursuant to recess.)

Mr. MOORE: I will identify this and then give it to the Clerk when he comes in, your Honor.

By Mr. MOORE:

Q. I show you a photograph and ask you if that is a picture, if that is a fair representation of the interior of the Sylacauga plant of Dixie Color, showing press 2022 installed?

A. Yes, sir.

Q. Mr. Clinton, did you make a physical inventory of the machinery, equipment, furniture, installations in the Sylacauga plant of Dixie Color as of January 1, 1961?

A. Yes, sir.

Q. And I show you a document and ask you if you can identify this as the inventory you made?

A. Yes, sir. This is as of October 16, 1961.

Q. Now, directing your attention to the fourth page of this inventory, will you explain how you have it set up on there?

406 A. Each item in the plant we have given an inventory number, which we show in the first column. The next column we show the amount, that would be the number or the numbers of any items. Next, is the description of the item, and next the source from which it came to us.

Q. I notice—pardon me—off the record.

(Thereupon a discussion ensued off the record.)

The COURT: Do you want to offer that picture and the inventory?

Mr. MOORE: Yes.

The COURT: Any objection to that?

Mr. FELDMAN: None at all.

The COURT: That will be marked when Mr. Ciccarelli comes in. Mr. Ciccarelli, there are two exhibits here, would you mark them in evidence. One is a picture, and the second is an inventory.

(Thereupon photograph referred to was marked exhibit D-2 and received in evidence.)

407 Mr. MOORE: Will you mark this for identification?
(Thereupon inventory referred to was marked Exhibit D-3 for identification.)

Mr. MOORE: Does your Honor wish to follow this?

The COURT: Yes.

By Mr. MOORE:

Q. Now, I show you Exhibit D-3 for identification, which is the inventory you described as of October 16, 1961, and referring to the third page, it lists office furniture and fixtures. I notice the source of those is F-e-l-a. What is Fela, who is Fela?

A. Fela was the name of the man who ran the Keystone Printing Company in Wilkes Barre, Pennsylvania and some years back, three or four years, they went into bankruptcy, and we bought—International bought and Greater Buffalo Press bought a lot of the items in that plant, including their office furniture and fixtures. These items here came to Sylacauga from the Fela or Keystone plant.

408 Q. They were shipped directly from the Keystone plant to Sylacauga?

A. Yes, sir.

Q. Then I notice on Page 2, the fourth item, one Photo Rapid Copier, that is marked "source—International Color Printing Company"?

A. Yes, sir.

Q. What was that machine?

A. A photocopy is a machine used for making photocopies of letters, and so forth, and the first time I went to Alabama I took that with me in my car so I could make copies, and I still have it down there. It has since been billed for by International to Dixie Color Printing Company.

Q. That has been invoiced to Dixie?

A. Yes, sir.

Q. Now, I note further down on the page you have items marked 'Buffalo', what is that?

A. That is equipment that was shipped to us by Greater Buffalo, sometimes from Dunkirk, sometimes from Burk Machine Tool Company, sometimes directly from Greater Buffalo plant. We mostly always referred to it as either Buffalo or Dunkirk.

409 Q. And the sources that you have on here that are marked Buffalo or Dunkirk, that refers to material that was shipped to Sylacauga from Buffalo or Dunkirk by Greater Buffalo, is that right?

A. Yes, sir, stereo or any other kind of equipment.

Q. And the only items that were received from Wilkes-Barre that are in the plant, were in the plant as of October 16, 1961, all bear the legend "Wilkes-Barre", is that right?

A. Yes, sir, either Wilkes-Barre or International Color Printing Company.

Q. Now, referring to the first inside page of this exhibit and the second inside page of this exhibit, do those two pages contain a list of the items that were shipped from Wilkes-Barre to Sylacauga?

A. Yes, sir.

Q. Well, the next items that appear to have been derived from Wilkes-Barre are items 34 and 35. Will you direct your attention to those?

A. Yes, sir.

Q. Items of the Nickel Plating Department. Now, what are those items?

A. They are cylinders that are used to carry the stereo-type plates from one nickel plating tank to another.

410 Q. Do you know whether or not these items were machined in Wilkes-Barre?

A. They were machined in Wilkes-Barre, the equipment. The body of the cylinder is made of micarta and the micarta was shipped to International Color from Buffalo together with the engineering and what not to convert them into the plate racks and the work was done in International at Wilkes-Barre. Then they were shipped to us in Sylacauga.

Q. Was Dixie billed for these items or this material?

A. After they got the micarta in Wilkes-Barre, they had to buy stainless steel and rods and some various other items that went into the project and Dixie Color was billed for the additional material.

Q. Well now, I note the next item "rectifier". What is that, item 36?

A. That is a rectifier used in the nickel plating operation. It was sent down there from Wilkes-Barre and it has been billed to Dixie Color by International Color.

Q. Item 43, Niagara Shears, where did they originally come from?

A. That originally was shipped from Buffalo down to Wilkes-Barre, I am sure by mistake, and it sat down in Wilkes-Barre for several years crated until we sent machinery from Wilkes-Barre to Sylacauga and it was sent down with the machinery.

Q. That was never uncrated in Wilkes-Barre?

A. No, sir.

Q. Item 51, what was that?

A. It is a sta-hi mat roaster used to roast mats before they are put into the casting box. This was a real old machine. It was not being used in Wilkes-Barre and it was sent down there and it has been invoiced by International to Dixie Color.

412 Q. What is the value of that machinery, would you say?

A. I think we are paying fifty dollars, or one hundred dollars, but I don't believe it has any value; I don't think they can sell it any more. It is valuable to us because we don't have one, or didn't have one.

Q. Item 59, press proof, what is that?

A. A proof press. That is a press on which we try out the stereotype plates before they are put on the large printing press and at one time we had two proof presses in the Wilkes-Barre plant, both of which were badly in need of repair, so we borrowed one proof press from Buffalo to allow us to put down a proof press at a time in Wilkes-Barre with the understanding that when we were finished with it, it would go on to Sylacauga. That is what happened. Eventually they overhauled two proof presses in Wilkes-Barre and sent us a proof press for Sylacauga.

Q. This proof press originally belonged to Greater Buffalo?

A. Either this one or one of the two that are in Wilkes-Barre. Of the three, one of them belonged to Buffalo.

Q. Now, Item 100, what is that?

413 A. That is the press itself.

Q. That is the press 2022 which we had the testimony on?

A. Yes.

Q. All right. Now, Item 109.

A. That covers the old hand baler, and has been invoiced to Dixie Color by International Color. That is also Item 110.

Q. What did you say that was, hand what?

A. Baler, b-a-l-e-r, for baling waste paper.

Q. What is the value of those items?

A. Twenty-five dollars, fifty.

Q. And item 113.

A. That is a work table and that has been——

Q. It is a bench, kind of?

A. It is a portable work table, one that you push around.

Q. New or old?

A. Old.

Q. What is the value of that?

A. I would judge that would be worth about twenty-five dollars.

Q. Item 262, the last item.

A. That is a stereotype print cutter, used for cutting the sizes of stereotype plates. It was originally sent from Buffalo

414 to Wilkes-Barre and used there for several years and I understand always with the idea that it would be sent to Sylacauga when we need it in Sylacauga.

Q. Now, are those the only items that came to Sylacauga from Wilkes-Barre, the ones you have described?

A. They are still there.

Q. Now, there was the one item on machine shop tools. Do you know about that?

A. Yes, sir, a machine shop equipment.

Q. And what was the case of sending that to Sylacauga?

A. That was sent down to enable them to do the work necessary to erect the press, the machine work that was necessary to go along in rebuilding the erection.

Q. Those were machine shop tools that the machinists used?

A. Yes, sir, blades, milling machines, drill presses.

Q. Where is that equipment now?

A. We shipped it back to Wilkes-Barre.

Q. And when did you ship it back?

A. After the last machinist left.

Q. When there was no longer need for this one?

A. When they were finished with it.

415 Q. Now, in the first two pages, I note, of this inventory, you reflected, or you have a description of the items to which you have testified which came to Wilkes-Barre?

A. Yes.

Mr. MOORE: I will offer the inventory in evidence.

The COURT: Any objection?

Mr. FELDMAN: No objection.

The COURT: Received.

The CLERK: Exhibit D-3 marked in evidence.

(Thereupon Exhibit D-3 previously marked for identification, was then received and marked in evidence.)

By Mr. MOORE:

Q. Now, do you know of any machinery, equipment or parts that are in the Sylacauga plant of Dixie Color that came from Wilkes-Barre, which you have not been paid for, or invoiced?

A. No, I don't know of any that is there except what I have got on the inventories.

Q. And, has all of the machinery parts been paid for with the exception of, actually paid for, with the exception of the
416 smaller items you have mentioned?

A. They have been invoiced, so I would assume they have been paid for.

Q. Now, are you familiar in general with the printing done at Wilkes-Barre for the account of King for shipment to southeastern papers located in the southeast area?

A. Yes, sir.

Q. And are you familiar, in general, with the transportation rates that have been, or are currently paid for the shipment of those comic supplements?

A. Yes, sir.

Q. And are you familiar, have you informed yourself as to the rates to these various newspapers, located in the southeast on shipments from Sylacauga?

A. Yes, sir.

417 Q. And as a result of that comparison do you know whether or not the printing of these papers, which are printed for the account of King, at Wilkes-Barre, if they were printed at Sylacauga would there be a substantial savings in transportation?

A. Yes, for papers located in that area, yes, sir.

Mr. MOORE: You may ask.

CROSS EXAMINATION

By Mr. FELDMAN:

Q. Mr. Clinton, referring to the Defendants' Exhibit D-3, namely the physical inventory as of October 16, 1961, did you at any time prior to October 16, 1961, prepare any physical

inventory of equipment and machinery at Dixie Color Printing Corporation?

A. Yes, sir.

Q. When did you do that, sir?

A. We prepared an inventory, physical inventory, December 31, 1960, and then we kept a running inventory.

Q. Was there any other inventory besides that one made?

A. No, sir.

Q. Now, were you informed or did you prepare this inventory with the thought that it was going to be used in connection with this litigation?

A. No, sir.

418 Q. That was made in the regular course of your business?

A. I made it because I thought I better know what was there.

Q. You had no thought when you made the inventory that it was going to be offered as an exhibit by the defendants?

A. No, sir.

Q. Now, the previous inventory which you made, is that set up in the same manner as this?

A. Yes, sir, I believe it is exactly the same.

Q. Now, when was the last time machinery or equipment was shipped from Dixie to International at Wilkes-Barre?

A. The second Saturday in October. I am not sure of the date.

Q. Was any equipment shipped prior to January 1960 from Dixie to Wilkes-Barre?

A. I can't think of any.

Q. I mean 1961?

A. Prior to January of 1961?

Q. 1961.

A. If there was, it was something of a minor nature, major equipment was not.

Q. Major equipment was or was not?

A. Was not.

418 Q. All the major equipment was shipped back, if any, after January 1961?

A. That is correct.

Q. Can you recall any equipment at all which was shipped from Dixie to International prior to January 1961?

A. I don't recall any.

Q. You don't recall any, sir?

A. I don't recall any.

Q. Now, at Dixie, what presently is the most expensive equipment you have there? Isn't it press 2022?

A. Press 2022 has more money in it than anything else, I would say.

Q. Have you had that equipment appraised recently?

A. I never had it appraised.

Q. Do you know whether it ever has been appraised?

A. I don't know whether or not it has.

Q. How much money was expended in constructing press 2022 including the purchase price, do you know?

A. I don't know that.

Q. I believe you testified that for all expenditures which International made in regard to the construction of Dixie that International has been repaid or is in the process of being repaid, is that correct, sir?

A. No, I don't think I testified to that.

420 Q. What did you testify to, can you recall, in regard to moneys which International——

A. There was no question like that.

Q. (continuing) In regard to moneys which International advanced or moneys they expended in either constructing the plant or furnishing Dixie with equipment; to your knowledge has International been repaid?

A. I wouldn't know.

Q. Do you know whether any arrangement was made to repay International?

A. I wouldn't know that.

Q. Well, as the plant superintendent of Dixie, do you know anything at all about payments made in regard to equipment shipped from International to Dixie?

A. Some of it I do, yes.

Q. What equipment do you know about in regard to payment?

A. Well, I know some of the equipment we have been billed for. I have approved some bills. I don't get all bills.

421 Q. Now, when you receive bills, who sends you the bills from International?

A. I don't have any bills from International.

Q. Well, where do you get the bills from then?

A. From the people from whom we make purchases or have work done.

Q. I am talking now about equipment or anything which came from International.

A. I was not billed down there for anything that came from International.

Q. But you did receive material from International, didn't you?

A. Yes, sir.

Q. And who determined the price to be paid International?

A. I don't even know what they were paid.

Q. You don't know whether they were paid or not?

A. No, sir.

Q. I believe you testified earlier that Dixie at the present time does not have any contracts with the Coosa River plant, is that correct, sir?

A. That is correct. I said to my knowledge it did not.

Q. Now, since International was acquired in 1955, have you had any conferences with the people at Coosa River in regard to furnishing Dixie with newsprint when Dixie commences operations?

A. Yes, sir.

Q. And whom did you have such conversations with?

A. The president of Coosa River Newsprint Company and various salespeople.

Q. Did you ever discuss the matter with Mr. Watt?

A. Yes, sir.

Q. And is Mr. Watt still active in the business?

A. No, sir.

Q. Who succeeded him?

A. Maury Hunt.

Q. Had you had discussions with that gentleman?

A. Yes, sir.

Q. When did these discussions take place?

A. I have had discussions with him continuously up until the last month. He calls me up regular.

Q. When you say "continuously", did you have discussions with him immediately after June, 1955?

A. I don't remember whether it was he or Watt. I think Mr. Watt was still there in June, 1955.

Q. Well, after June, 1955, can you place a time when you first had discussions with either Mr. Watts or his successor?

A. No, I wouldn't know exactly when.

423 Q. Can you tell me was it still 1955 or was it first in 1956?

A. We probably had discussions in 1956. I am not sure whether or not we had any after June, 1955 for the remainder of the year or not.

Q. When you say "we" do you mean just yourself or were there other people involved?

A. I probably sat in on discussions.

Q. And who participated in the discussions?

A. I sat in on discussions that included Mr. Gorman, Mr. Brennan and Mr. Hammond.

Q. Where did these discussions take place?

A. I have had discussions with them in Wilkes-Barre; discussions with them in Alabama and discussions with them in New York.

Q. Was Mr. Gorman present at the discussions which were held in Alabama?

A. I don't believe—well, I am not sure. I never went to Alabama—I went to Alabama with Mr. Gorman but I don't remember whether or not we saw either Mr. Hunt or Mr. Watt at the time. But I think we did. I think we had dinner with Mr. Watt one night.

Q. We are talking now about the period after June 1955, is that correct?

424 A. Yes, sir. Mr. Hammond was also there.

Q. Now, have you had discussions with Mr. Gorman in regard to the possibility of Dixie getting its newsprint requirements from the Coosa River mill since June, 1955?

A. Yes, sir.

Q. At the present time has any arrangement been reached in regard to Coosa River supplying Dixie in the event operations should start at Dixie?

A. No, sir.

Q. Have you or anyone else on behalf of Dixie made any proposals to the people at Coosa River in regard to getting newsprint in the event operations commence at Dixie?

A. I think any proposals would come from them.

Q. Well, have you come forth with any counter proposals.

Mr. MOORE: If Your Honor please, if I can make an objection, I think I have been very patient here. The only reason Coosa was mentioned was the Government in one of its aff-

davits, I believe, said that the great stumbling block of a plant in the south was to be able to make this wonderful contract with Coosa River and all we brought out was that Greater Buffalo has no contract. Now, it seems to me very clear from the cross examination that Coosa is around trying to sell them all the time and I don't see that we are getting any place spending twenty minutes on it. It seems to me irrelevant.

Mr. FELDMAN: The point is, Your Honor, that the witness has testified that transportation is a big factor in regard to newsprint and the documents submitted by the Government show that Mr. Gorman originally, participating in the negotiations which preceded the first contract, stated that one of the big things about going into the Sylacauga area will be the fact that they will be operating a plant which is so near a newsprint mill and the evidence in our possession is further that discussions were had with these people. I am interested in finding out the status of that.

The COURT: Overruled. You may ask. Read the last question. What confounds me somewhat on this picture of newsprint, I have the impression from Mr. Gorman that the only people who could get a contract, at least, a desirable one, was the Hearst, and that they insisted on it, but apparently there is nothing between Hearst and the Buffalo Press in the way of a contract to supply newsprint.

Mr. FELDMAN: Well, there are some documents in our moving papers, your Honor, which show that arrangements were made pursuant to that contract for International in the event they did start a plant down there that they would get newsprint supplied. In other words, Hearst was going to assign their newsprint but it would come from Coosa River to International.

The COURT: The witnesses have said they know of no such arrangement. Let me ask you, you are down there on the scene; if I gave you an order tomorrow to start printing up these color comics, where would your newsprint come from? What is your arrangement?

The WITNESS: I could get newsprint from Coosa River, or from International or Canada where they are all at the same price.

The COURT: At an attractive price?

The WITNESS: Yes.

The COURT: More attractive than at Wilkes-Barre?

The WITNESS: No, sir. I think the price is the same whether it is Canada or Coosa River.

The COURT: Even though Coosa River is only twelve miles from the plant?

The WITNESS: Yes, sir. There is some sort of a zone basis. The Canadian price is the same price.

The COURT: Your attractiveness down there is the short rate of delivery of the finished product to the consumer?

The WITNESS: Yes.

The COURT: There is no advantage of that plant being
429 twelve miles as far as the cost of newsprint is concerned?

The WITNESS: No, sir.

Mr. MOORE: I think, your Honor, to answer the question about the first matter, they were looking for a responsible party to run a contract and these people will sell anybody now.

By Mr. FELDMAN:

Q. On the basis of discussions you had with people at Coosa River, and with other people, is it your testimony that there was no problem presently in getting newsprint in the Sylacauga area?

A. There is no problem in getting newsprint.

Q. And is it your testimony that no freight cost advantages would come to Dixie if newsprint were purchased from the Coosa River Newsprint Company?

A. The Coosa River Newsprint Company would allow us to publish, I presume, would allow us to publish transportation costs from Coosa River to Sylacauga and if we could manage one way or the other, to haul it any cheaper, than we could save the difference.

430 Q. Has a similar arrangement been offered from the sites of other newsprint companies?

A. I don't know.

Q. Have you made inquiry at all?

A. No, sir.

Q. I believe you testified that no definite commitment was made prior to June, 1955 for International to build a plant in the southeast, is that correct?

A. In Sylacauga?

Q. That's right.

A. That's right.

Q. At Sylacauga, is that right?

A. Yes.

Q. And at that time, to your knowledge, who had authority to make any such commitment on behalf of International?

A. Mr. Gorman.

Q. So any knowledge you know in that connection came to you from Mr. Gorman, is that correct?

A. That's right.

Q. I believe you also testified that the reason the commencement of no plant began was because International was unable to obtain a favorable contract from King, is that correct, sir?

A. Yes, sir.

431 Q. You know when that contract was entered into between King and International?

A. Yes, sir.

Q. When was that?

A. July, 1955.

Q. And when was International acquired from Greater Buffalo?

A. In June, 1955.

Q. Now, when did you first go down to Sylacauga with the directions to contact people for the purpose of erecting a plant there?

A. When you say contact people—

Q. That's right.

A. Do you mean a contractor?

Q. Anyone, whether it be a contractor, whether it be the people of the community.

A. I don't think I was ever sent down with exactly that direction.

Q. What directions were you sent down with after the acquisition of International?

A. After the acquisition of International?

Q. Yes.

A. I was just told to go ahead with the plant.

Q. And were you given discretion as to how you were going to do it?

432 A. As to how I was going to go ahead, but I wasn't given directions to do what I wanted to do.

Q. When did you go down there under those instructions the first time?

A. Well, my contacts were made by telephone after I was given the okay to go ahead.

Q. And from where did you make those contacts by telephone?

A. From Wilkes Barre.

Q. And did there thereafter come a time when you went down to Sylacauga?

A. Yes, sir.

Q. And when was that, sir?

A. I made many trips to Sylacauga.

Q. Well, when was the first trip you took after you made these telephone calls from Wilkes Barre?

A. I think I went down there in December of—well, maybe it was in July of 1956.

Q. And when you went down there, did you contact people in the construction field, electrical field?

A. Yes, sir.

Q. And did you indicate to them what the name of the proposed plant was going to be called?

A. I might have and I might not. I don't remember if
433 I told them it was going to be Dixie Color Printing Company.

Q. Did you know at that time it was going to be Dixie Color Printing Company?

A. No, I did not, sir.

Q. What name did you use in introducing yourself, or talking to these people?

A. I had already talked to all of the people. I told them I felt as a representative of International Color, so I didn't tell them who I was.

Q. Did you mention Greater Buffalo Press at all?

A. Yes, sir.

Q. And now, subsequently, did you ask for bids as to any jobs at all from these people?

A. Yes, sir.

Q. And do you recall on the bids which came in, how the proposed plant was referred to, I mean, what name was used in referring to the proposed plant?

A. Southern plant, is that what you mean?

Q. Southern, or any other name? Was the name International Color Printing referred to?

A. Well, the tracings that were supplied to us by Armco carried their own title block. I don't know whether they

434 in a letter or any letters they would have sent would have been addressed to International Color.

Q. You don't know. You can't recall the subject matter referred to in the letter, I mean?

A. Well, there were many letters. Some of them —

Q. How did they refer to this plant in the south? When you say "southern", was this the way that it was referred to?

A. Well, they talked about the southern plants and southeastern plants.

Q. Were these letters directed to you at Wilkes Barre or directed to you elsewhere?

A. Directed to me at Wilkes Barre.

435 Q. I believe you testified that a deed of land was made to Greater Buffalo Press, is that correct?

A. Yes, sir.

Q. Do you recall the circumstances under which the deed was given to Greater Buffalo Press?

A. I don't quite follow you.

Q. Immediately prior to the deed being given to Greater Buffalo, did you have any discussions with people at Sylacauga in regard to that deed being made to Greater Buffalo?

A. Yes.

Q. Who did you have discussions with down there?

A. The Mayor of the Town, Ed Howard and Jack Nealeans, Manager of the Chamber of Commerce and the Secretary of the Industrial Board.

Q. Did the Mayor come up to Wilkes-Barre at all?

A. Yes, sir.

Q. When was that, prior to the deed being given to Greater Buffalo —

A. Yes, sir.

Q. Or —

A. Prior to.

Q. Did he visit the plant?

A. I'm sure he would have, he would have been interested.

Q. Who did he speak with?

436 A. He spoke with me and Mr. Gorman.

Q. Did he visit the Greater Buffalo Plant at all, to your knowledge?

A. Mr. Nealeans?

Q. That is right.

A. Yes, sir.

Q. That was on the same trip?

A. Yes, sir.

Q. Did he visit the Greater Buffalo Plant before, to your knowledge, or after that first trip to Wilkes-Barre?

A. I believe it was after. I am not positive, I think it was after.

Q. At the time the land was deeded to Greater Buffalo Press do you know whether any people at Sylacauga were soliciting funds in order to themselves be able to deed the land to Greater Buffalo Press?

A. They had to solicit funds, that is right.

Q. In soliciting funds do you know what name was used in regard to the proposed plant, whether it was International or Greater Buffalo?

A. I wasn't there, I wouldn't know.

Q. Isn't it a fact that when it was brought to your attention that the land would be deeded that it was indicated the land would be deeded to International Color Press rather than Greater Buffalo Press?

A. Would you repeat that?

Mr. MOORE: What was the question?

By Mr. FELDMAN:

Q. I will rephrase the question. Mr. Clinton, I show you Government's Reply Exhibit Number 13, and show you a memorandum consisting of the last two pages, dated June 18, 1956, and bearing the name at the end "Joseph Clinton", and addressed to Mr. Gorman. Is that a copy of a memorandum you wrote to Mr. Gorman?

A. Yes, sir.

Q. It is.

The COURT: We have a new stenographer coming in, she is just about to start. We will have her start at ten o'clock in the morning.

(Thereupon proceedings were adjourned to October 26, 1961, at 10:00 a.m.)

438

[Caption Omitted in Printing]

Proceedings held before HON. JOHN O. HENDERSON, U.S. District Court Judge, Western District of New York, on October 26, 1961, at Buffalo, New York.

APPEARANCES: *Messrs. Raichle, Banning, Moore & Weiss*, by *James O. Moore, Esq., & Arnold Weiss, Esq.*, appearing in behalf of Defendant, Greater Buffalo Press.

Messrs. Gallop, Climenko & Gould, by *Jesse Climenko, Esq.*, and *Messrs. Lord, Day & Lord*, by *Robert B. Haynes, Esq.*, appearing on behalf of Hearst Corp.

Messrs. Baker, Hostetler & Patterson, by *Richard F. Stevens, Esq.*, appearing on behalf of Newspaper Enterprise Association, Inc.

Raymond M. Carlson, Esq., Elliott H. Feldman, Esq., Department of Justice, Anti-Trust Division appearing in behalf of Plaintiff.

439 PROCEEDINGS OF OCTOBER 26, 1961, COMMENCING AT 10:00 A.M.

The COURT: Will the last witness take the stand, please.

JOSEPH CLINTON, having been previously sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

By Mr. FELDMAN (Continued:)

Q. Mr. Clinton, do you recall testifying yesterday that nine hundred thousand dollars have been advanced by Greater Buffalo Press to Dixie Color?

A. I think I testified to the effect it was my understanding there was a total of nine hundred thousand dollars invested in Dixie Color.

Q. Where did you get the knowledge?

A. From discussions with Greater Buffalo, some of it I had personal knowledge of, I passed on the bills.

Q. Can you give us a breakdown of that nine hundred thousand dollars as to building, land, or anything else, a general breakdown?

A. I couldn't give an accurate breakdown.

Q. Can you give me an approximate breakdown?

440 How much do you attribute to the building?

A. I believe the building would have cost somewhere in the neighborhood of four hundred thirty thousand dollars.

Q. Mr. Clinton, I show you a copy of a memorandum dated January 9, 1959, which purportedly was written by you to Attorney Edwin D. Livingston, in Sylacauga, Alabama, and ask you whether this document refreshes your memory?

A. I remember this letter.

Q. All right. Does that letter refresh your memory as to the cost of the building at Sylacauga?

A. I would say that was probably the cost of the building at that time.

Q. Does it refresh your memory as to the total cost, or is your answer still the same?

A. My answer would be the same. I think the building would cost in the neighborhood of four hundred twenty thousand or four hundred thirty thousand dollars.

Q. In January 1959, what did you estimate the cost of the building was?

A. According to that letter, three hundred eighty-three thousand dollars, or three hundred eighty-seven thousand dollars.

441 Q. Three hundred eighty-three thousand seven hundred fifty dollars, is that right, sir?

A. Yes, sir.

Q. When was the building completed?

A. Well, the building was substantially completed about the end of 1958. We continued to work on the building up until the last—I would say the last month or two.

Q. Is it your recollection that in 1959 that ninety-nine percent of the building was completed?

A. Ninety-nine percent of the building as we had originally formulated the plans probably were completed at that time. We made revisions after that time.

Q. What revisions did you make after that time?

A. We raised the electrical control balcony; we put a sizable unloading dock on the back of the building to go on to the one spur track or siding.

Q. How much costs were involved in those innovations you just described since January, 1959?

A. I would say, as near as I can estimate, the difference between maybe four hundred thirty thousand dollars and the figure you have there.

Q. Outside of the building, what other expenses were incurred?

442 A. The machinery.

Q. By the machinery, do you mean the main press 2022?

A. No, press 2022 was part of it.

Q. That was the main machinery?

A. That was the single main item. The stereotype equipment is probably very close to being as expensive as the press

was.

443 Q. And how much do you attribute to the stereotype equipment?

A. I wouldn't have the knowledge that would allow me to give an accurate figure, because I didn't see the bills on a lot of it. But I would judge that the stereotype equipment would have cost maybe a hundred thousand dollars, maybe more.

Q. Was that equipment bought new?

A. Some of it was bought new.

Q. Where did you buy the equipment from?

A. From various suppliers. Some of it we had made there.

Q. What equipment did you have made at Sylacauga?

A. We had our plating tanks made in Sylacauga, we had our—what we call a cyclone, our chip collector set up.

Q. How much did you expend at Sylacauga for such equipment?

A. All we did at Sylacauga was approve the bills and send them to Buffalo for payment and I didn't keep any track. I didn't attempt to keep any record of the amount.

Q. So you have no idea how much that amounted to, is that right?

A. No, I have no idea how much it amounts to. I
444 would say it would be quite a considerable amount, fifty thousand dollars, maybe seventy-five thousand dollars.

Q. In other words, it would be a minimum, you say, of fifty thousand dollars, is that correct?

A. I won't say a minimum. I wouldn't say a minimum, I wouldn't say a maximum because I just don't know.

Q. But it is possible it might have been fifty thousand dollars?

A. It might have been fifty thousand dollars, and it might have gone up to one hundred thousand dollars.

Q. What other expenditures were made that you know of, sir?

A. In the plant itself?

Q. At Sylacauga.

A. We put in a railroad siding down there.

Q. Do you know how much money was involved in putting that in?

A. Somewhere around eight thousand dollars, or nine thousand dollars.

Q. And the other expenses?

A. We put a baler, a paper baler that cost, I believe,—the cost of the baler itself was around five thousand dollars.

Q. Any other equipment?

445 A. We put a pallet strapping station in. It probably cost—and binding and strapping or tying equipment that probably cost maybe three thousand dollars, or four thousand dollars.

Q. Any other equipment?

A. We bought a lot of machinery and tool equipment.

Q. You bought that at Sylacauga?

A. Yes, sir.

Q. Did you get any machinery and tool equipment from International which you used?

A. Did you say did we get any?

Q. Yes.

A. We did. We did get machinery from International which we used.

Q. Now, in regard to the stereotype equipment, did you get any equipment from International?

A. Yes, sir.

Q. And what equipment did you get from International?

A. I think the items that we got from International I have included in that inventory. One of them was the Sta-Hi mat roaster, another was a ring cutter, we got a rectifier. That is all I can remember off hand.

Q. Now, going back to the equipment which you received from International, I believe you stated yesterday that
446 some or all of that equipment was shipped back to International on the second Saturday in October, is that correct sir?

A. The machine shop equipment.

Q. I am talking about machine shop equipment, is that right, sir?

A. That's right.

Q. And by the second Saturday in October you mean the second Saturday in October of this month, is that correct?

A. Yes, sir.

Q. And that would make it October 13, is that correct sir?

A. If that is the date of the second Saturday, that is correct.

Q. Excuse me. I stand corrected. The 14th. And Defendant's Exhibit D-2, which you identified yesterday as the physical inventory taken as of October 16, 1961, was made by you when, on October 16, or prior?

A. October 16.

Q. In other words, that was two days after this equipment left Dixie for International, is that correct, sir?

A. Yes, sir.

447 Q. Now, in regard to machine shop equipment from January 1, 1961, was any other machine shop equipment belonging to International sent back from Dixie other than the equipment sent on October 14?

A. Not that I can remember.

Q. In other words, all this equipment was sent back on October 14, is that correct, sir?

A. Yes, sir.

448 Q. Mr. Clinton, do you still maintain, as you did yesterday, that Defendant's Exhibit D-2, namely the physical inventory of October 16th, 1961, was not prepared for the purpose of this litigation?

A. Positively.

Q. All right. Mr. Clinton, in regard to the opening up of the Sylacauga plant, is it your opinion that the cost of manning will be the same or greater than that of Wilkes Barre?

Mr. MOORE: Pardon me, would you repeat that question? (Whereupon the Court Reporter read the previous question.)

Mr. MOORE: I think you ought to clarify what you mean "manning".

The COURT: Do you mean the number of employees?

Mr. FELDMAN: Yes.

The COURT: Are you assuming they are going to abandon Wilkes Barre?

Mr. FELDMAN: No, sir.

The COURT: How can he answer that then? How can he answer as to the cost of one place without having the
449 same number of employees or of the same class? How can that be compared?

Mr. FELDMAN: Evidently my question wasn't clear.

The COURT: All right. Say that again.

By Mr. FELDMAN:

Q. In computing the cost of the operation of a printing plant in the past, to your knowledge, do printers consider the cost

involved in having man operated machines and other equipment?

The COURT: Does he consider it in the cost of operating?

Mr. FELDMAN: Yes.

The WITNESS: It would have to be.

The COURT: Isn't that self evident? Let's find out how many men he is going to have of a certain group of men for the full production, and how much it is going to cost to pay them and how much it has cost in Wilkes Barre.

Mr. FELDMAN: Well, sometimes it may be more and sometimes it may be less.

The COURT: If he can answer that. Is labor cheaper in
450 the south? Do you contemplate it is going to be cheaper in the south than it is in the north?

The WITNESS: It will not be cheaper, sir.

By Mr. FELDMAN:

Q. Do you contemplate that it will be more expensive than the wages being paid at Wilkes-Barre?

A. I don't imagine there would be much difference. I think a man down there will have to be paid the same rate as he will have to be paid in Wilkes-Barre, or anywhere else.

Q. Will that also apply to Dunkirk?

A. When you say will that also apply to Dunkirk, what comparison are you trying to make? Between Wilkes-Barre and Dunkirk, or Sylacauga and Dunkirk?

Q. Between Sylacauga and Dunkirk.

A. I would imagine Dunkirk is on a par with Sylacauga and I would imagine that Sylacauga will be on a par with Dunkirk, or Dunkirk on a par with Sylacauga.

Q. Now, in testifying yesterday that Dixie would not be able to operate at a profit unless it was able to print some seven
and one half million fours per week, did you compute
451 total cost in terms of one thousand fours that would be incurred at Sylacauga?

A. No, sir.

Q. Well, if that is the case, sir, how are you able to make the statement that the operation at Sylacauga would be at a loss or it would not be at a profit unless seven and a half million fours were produced a week?

A. I think I made the general statement, when I said it was my estimate, that it would require a minimum of seven and a half million, and I based that estimate on the fact that we ran

the Peoria plant, when we ran the Peoria plant we printed as much as six million at a considerably less investment and we didn't make money.

Q. Isn't it a fact that when the Peoria plant was operating, you didn't have pre-registry there?

A. That is a fact.

452 Q. Isn't it a fact with pre-registry the efficiency improves?

A. That is a fact.

Q. Isn't it a fact that your efficiency improves materially?

A. I don't think the efficiency would improve enough to offset the deferential in the investment at Peoria as against the investment in Sylacauga.

Q. When did you leave International, sir?

A. When did I leave Wilkes-Barre?

Q. That is right, sir.

A. I left in May 1960. I went back for a week in October 1960.

Q. And how many years did you work at International?

A. I worked at International continuously from October 1936 up until that time with the exception of service years.

Q. And during that time did you learn the names of other printers of color comic supplements?

A. Yes, sir.

Q. And who are some of these people, do you remember them?

A. Who printed color comic supplements?

Q. That is right.

A. Greater Buffalo Press, Eastern Color, Southern 453 Color, Star Color, Hearst Corporation—

Q. Do you have any idea how many supplements Southern Color prints during the course of one week?

A. No, sir.

Q. Do you have any idea whether it exceeds three million four hundred thousand or four million fours per week?

A. I don't know, sir.

Q. In regard to Acme, during the period from 1953 to 1954, do you know whether the production at Acme exceeded three million four hundred thousand fours per week?

A. I wouldn't know.

Q. In regard to Star, do you know whether the production there exceeded three million four hundred thousand fours per week?

A. I wouldn't know.

Q. Based upon your experience in the industry, do you hold that these companies in the event they were producing during the period from 1953 to 1956 less than four million fours per week could not operate at a profit?

A. Would you repeat that question?

Mr. MOORE: I think that is an improper question. He
454 is asking him if he knows now what they produce. Now he is asking him for an assumption which isn't in the record and asking him to express an opinion on a plant that he is totally unfamiliar with. The witness testified from his experience at Wilkes-Barre.

The COURT: It seems to me you are asking this man to take into consideration and state his opinion as to whether a profit would result. Unless he can say he knows it is purely speculative.

Mr. FELDMAN: I maintain, Your Honor, that the opinion of this witness is speculative to begin with.

The COURT: He has his own plant, he knows the cost, he knows its efficiency, since he was twenty years old he has been in the printing business and he has been the assistant manager at Wilke-Barre, and now he is in charge. I think he is in a position to estimate what his expected profit would be from
455 his own plant. I think you are asking him to assume too many things about competitors. Unless you can qualify it, do you want to try to qualify it?

Mr. FELDMAN: Your Honor—

The COURT: Sustained. Next question. Let me ask you this: do you have an opinion based on what you know?

The WITNESS: No, sir. I do not. I would say it is impossible to have an opinion.

By Mr. FELDMAN:

Q. At Sylacauga do you know how many fours can be produced or printed by press 2022 in one hour?

A. Going top speed?

Q. First talking about top speed.

A. Top speed, under conditions of production I don't know because we have never produced with the press. I know the speed of the press.

Q. That is the maximum speed?

A. No, I know the geared speed.

Q. What is the geared speed?

456 A. Thirty-six thousand per hour.

Q. What other type of speeds are referred to in the printing field outside of geared speed?

A. Well, we refer to the net per hour. The fact that the press is geared to run thirty-six thousand an hour doesn't mean its going to run that. We may only be able to run it twenty-seven thousand per hour.

Q. When you say geared, is that the maximum?

A. That is the maximum.

Q. Do you have any idea what the average speed would be per hour?

A. No, sir, we never ran the press. I would like to clarify that. We never ran the press under conditions of production. We have tried the press to see if the press would run.

Q. Mr. Clinton, when was it decided that the plant at Sylacauga would have the name Dixie Color, if you can recall?

A. In January of 1957.

Q. Do you recall when Dixie was incorporated?

A. The incorporation began in January 1957. I think it was formalized in April 1957.

Q. And before that time what name was this plant going to be called, do you know?

457 A. Before that time that plant hadn't been named.

Q. What was it referred to at any interval of time, do you know, sir?

A. By the people down there it was referred to as the Funny Paper Plant.

Q. And was it referred to by any other name? Was it ever referred to as International Color Printing Company's Plant?

A. I am sure it must have been.

Q. In speaking to the people down at Sylacauga, what did you refer the plant to, Greater Buffalo or to International?

A. I don't particularly remember ever making such a reference because the people I dealt with all knew me. They knew where I was from, they knew the circumstances, they knew our affiliations with Greater Buffalo.

Q. Now, prior to the time that the land at Sylacauga was deeded to Greater Buffalo, did you speak with people at Sylacauga with regard to the deed being made to Greater Buffalo?

A. I am sure I must have.

Q. Now, did there come a time to your knowledge when you helped in the preparation of a letter for International in which International accepted the deed of the land in the name
458 of International? Do you recall that sir?

A. You will have to repeat that question, sir.

Q. Do you recall preparing a letter for Mr. Gorman and of International in which he accepted the deed of the land on behalf of International?

The COURT: Do you have that letter?

Mr. FELDMAN: Yes, I do.

The COURT: Show it to him.

By Mr. FELDMAN:

Q. I show you the Government's Reply Exhibit 13, attached to the moving affidavits, and show you page two of that exhibit and ask you whether you prepared this document dated June 26,
1956?

Mr. MOORE: Could I have the exhibit number on that again?

Mr. FELDMAN: Yes, it is on the front page, reply Exhibit 13.

The WITNESS: I remember this. I remember the letter.

By Mr. FELDMAN:

Q. Do you know whether the original was sent by Mr. Gorman?

459 A. Offhand I don't know.

Q. You don't know sir?

A. No, sir.

Mr. MOORE: At this point, I haven't seen this document before, but I think counsel ought to correct his statement of what it was. It isn't accepting a deed in the name of International at all. There never was such a deed as he well knows.

Mr. FELDMAN: All I asked the witness was a question and I asked him whether this refreshes his memory.

Mr. MOORE: You characterized the letter.

Mr. FELDMAN: There are two letters. There is the first letter, than there is a second letter. Now, the second letter, Mr. Moore, deals with the transfer of the deed to Greater Buffalo. I am talking about the first letter.

Mr. MOORE: Which you characterized as an acceptance upon the part of International as a deed, which the letter does
460 not state. All I am asking you to do is state the fact.

The COURT: What is the fact about International being involved here? Is there some discussion of whether a deed

might eventually be taken in the name of International or something to that effect?

Mr. FELDMAN: Yes.

The COURT: All right. I will read the letter. Ask him about the Greater Buffalo Press, if you want to, in connection with this deed. We are going to have to move along here. I told you before that we are limited in our time here. I want you to have a full examination but we can't waste time on colateral matters if they are not important.

By Mr. FELDMAN:

Q. Well, at that time do you recall drafting two proposed letters for Mr. Gorman on behalf of International?

461 A. When you showed me one which looks familiar to me, but I don't particularly remember two letters.

Q. All right. I will show you the two now, the whole exhibit.

A. This is the one I saw?

Q. Yes, that is the first one. There is the second one.

A. I remember this letter.

462 Q. You remember both letters?

A. Yes, sir.

Q. All right. Now, will you tell me the reason, if you can recall, why you helped draft those two letters?

A. I think those letters were drafted at the request of the Chamber of Commerce or the Industrial Development Board of Sylacauga.

Q. And do you know why they asked you to do that, sir?

A. They wanted to solicit additional moneys to pay for the additional ground that was required for this building.

Q. And what was the necessity of those letters being written, sir?

A. They were going to use those letters to conduct the solicitation.

Q. I show you the same exhibit and ask you to read aloud the second sentence.

A. (Reading) It is my understanding that the purpose of this letter is that they wish to use it as a basis for soliciting the additional \$16,000.00 or \$18,000.00 which they require for the additional land and grading.

Q. Will you continue reading.

A. (Reading:) In other words, to not complicate the

463 thing on the local level we decided it would be better to write a supplementary letter advising that title will be held and the building owned by the Greater Buffalo Press and the deed should be made out accordingly. This is the reason for the second letter.

Q. Was this statement correct when you wrote this memorandum on or about June 18th, 1956?

A. The statement that I just read?

Q. That's about right?

A. Yes.

Q. Mr. Clinton, after Dixie Color was incorporated, did Mr. Gorman become president of that corporation?

A. Yes, sir.

Q. And for how long a period was he president?

A. I don't know, sir.

Q. And is he president at this time?

A. No, sir.

Q. Was he the first president, sir?

A. Yes, sir.

Mr. FELDMAN. I have no further questions.

The COURT. May I ask a question? Mr. Clinton, you told me yesterday that there was no advantage in being close to the newsprint source because the cost is the same but you
464 also pointed out that you expected a material advantage in the cost of delivery of your product from Sylacauga to the southeast cities that you served, and you also told us that there is no advantage that you knew of in the cost of labor between the north and the south. Are there any other advantages that you contemplate profit wise or otherwise in being at Sylacauga in opening this plant?

The WITNESS. I would say, sir, that the big advantage is going to accrue to the newspapers on the transportation savings from the plant.

The COURT. That is the same thing you said yesterday?

The WITNESS. Yes.

The COURT. There is no other apparent advantage in being down there rather than in the north, say, Wilkes-Barre?

The WITNESS. No, sir. I think the big advantage is going to accrue to the newspapers on transportation savings.

465 The COURT. All right.

REDIRECT EXAMINATION

by Mr. MOORE:

Q. I just have one or two questions. Well, Mr. Clinton, as far as the citizens of Sylacauga were concerned who were active in promoting this plant, it didn't make any difference to them whether the plant was run by International, Greater Buffalo or Chic Maid Hat Company, did it?

A. No, sir. I think probably seventy-five percent of the people who are aware of the plant down there think it is mine.

Q. The plant has never been in production, has it?

A. No, sir.

Q. And the reason you haven't opened it is the existence of this restraining order?

A. Yes, sir.

Mr. MOORE. I think that is all.

The COURT. Step down. Next witness.

(Witness excused.)

WILLIAM J. HAMMOND, called as a witness by the de-
466 fendants and being first duly sworn, testified as follows:

The CRIER: What is your name, sir?

The WITNESS: William J. Hammond.

DIRECT EXAMINATION

By Mr. MOORE:

Q. Where do you live, Mr. Hammond?

A. Lakeview, New York.

Q. And what is your occupation?

A. Treasurer of the Greater Buffalo Press.

Q. And how long have you been employed by Greater Buffalo Press?

A. I have been associated since 1930 and on an actual full-time basis since 1945.

Q. And what has been your training in the business, what have you done?

A. Mostly along the lines of finance and accounting.

Q. And is that what you have done for Greater Buffalo Press over the years?

A. That's right.

Q. Now, are you familiar with the history of Greater Buffalo Press?

A. Yes, I am.

Q. And when was the company established?

A. The company was established in 1926.

467 Q. And do you know what the initial capital investment in the company was?

A. It was \$3,000.00.

Q. And since 1926 has there been any other investment in the company from outside sources?

A. None from outside sources. It has always been retained earnings.

Q. And has the company been built entirely on retained earnings?

A. Entirely.

Q. When did the company start in the business of printing color comic supplements?

A. In 1933.

Q. And do you know what their first business was?

A. The first contract was with the Syracuse Herald American.

Q. That was the first contract they had for printing color comic supplements?

A. That's right.

468 Q. Did they over the years acquire contracts with other newspapers?

A. That is right.

Q. Now, are you familiar in general with the business that is now done by Buffalo Greater Press in this field of printing the colored comic supplements?

A. I am familiar with all our accounts, yes, sir.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked Exhibit D-4 for identification.)

Mr. CARLSON: Is this something we have seen before?

Mr. MOORE: No.

Mr. CARLSON: Do you have a copy for me?

Mr. MOORE: Not right now I don't.

By Mr. MOORE:

Q. I show you a list marked D-4 for identification and ask you did you prepare that list?

A. I prepared it.

Q. Will you describe what it is?

469 A. It is a list of printing jobs performed by Greater Buffalo Press.

Q. And the list is as of what time?

A. May 2, 1961.

Q. And this list reflects the name of the city where the paper is located?

A. That is right.

Q. And——

A. The circulation.

Q. The circulation of the paper?

A. That is right.

Q. And what is the third column?

A. The third column indicates when we acquired it. Not the date we acquired it, the fact it was acquired by us either from the beginning of the inception of the comic section, or that they came to us directly from their own plant.

Q. In other words, you have listed over in the third column, you represent the circulation of papers where you have obtained the contracts where they formerly printed their own?

A. Printed their own sections.

Q. I think the fourth column reflects the same figure for papers acquired since 1954?

A. Since 1954.

470 Q. Now, from this computation did you arrive at a figure which shows what percentage of the color comic supplement printing business, enjoyed by Greater Buffalo Press, was obtained from newspapers who had formerly printed their own color comic supplements?

A. Or came to us from the inception of their section; yes I did.

Q. What percentage of your business is that?

A. Eighty-eight and nine-tenths percent.

Q. Where are the color comic supplements printed by Greater Buffalo Press?

A. At the present time they are all printed in our plant in Dunkirk, New York.

Q. Do you also have a wholly owned subsidiary in Texas?

A. Yes, we do.

Q. What is the name of that?

A. Southwest Color Printing.

Q. When was that company set up?

A. You mean when it was incorporated?

Q. When was the plant——

A. The plant opened in 1958 in production.

Q. When was the plant started?

A. Construction was started the end of 1955 or the
471 early part of 1956.

Q. When was the company first set up, do you recall?

A. The company was incorporated in 1956. I said, Mr. Moore, that all of these jobs are printed in Dunkirk. You refresh my memory, some of them were printed—

Q. In Lufkin?

A. Yes, some of them were sublet to International Color Printing at Wilkes Barre.

Q. In other words, some of those jobs are runs which you have sent down to Wilkes Barre?

A. That is right.

Mr. CARLSON: Are you still referring to this exhibit that was marked for identification?

Mr. MOORE: Yes, sir. I will offer it in evidence.

The COURT: Any objection?

Mr. CARLSON: I have a general objection to it, to the exhibit.

The COURT: Do you want to look at it?

Mr. CARLSON: Yes. I have a general objection to the exhibit that it reflects matters not pertinent to this law suit,
472 namely, the printing of color comic supplements not in the business, in the color comic supplement business, but rather things done at home, such as shoes made in an Indian teepee, that is reflected in the figures. The figures are immaterial to the basic question, any basic question in the law suit.

The COURT: I don't get the "Indian teepee".

Mr. CARLSON: The analogy is a simple one, that is a—

The COURT: Does that say anything about an Indian teepee?

Mr. CARLSON: No, sir.

The COURT: Overruled, received. Do you want to give counsel a chance to examine that?

Mr. MOORE: Yes.

473 By Mr. MOORE:

Q. Now, are you familiar with the standard form of contract on which Greater Buffalo Press does this color comic supplement business?

A. Yes, I am.

Q. What are the terms of those contracts, the length?

A. Generally, one year.

Q. What is the provision about renewal?

A. They are automatically renewed for one year. They are subject to cancellation on sixty days for a number of reasons, four or five reasons.

Q. And do you have any business under contract now at Greater Buffalo that is not subject to the sixty day cancellation?

A. None.

Q. Cancellation by the newspapers?

A. By the newspaper.

Mr. MOORE: Will you mark this for identification?

The CLERK: D-5 marked for identification.

(Whereupon a letter was marked Exhibit D-5 for identification.)

By Mr. MOORE:

474 Q. Do you recall when consideration was first given by Greater Buffalo to the establishment of a plant in the south, southeast?

A. Yes, I do.

Q. When was that?

A. Oh, we talked about it as far back as 1945, 1946.

Q. Now, had investigations been made of various places for a plant?

A. Yes.

Q. What was the nature of those investigations? Who conducted them?

A. One of the officers of our company made a trip through the south to look at plant sites.

Q. When was that?

A. Oh, I guess maybe around 1948.

Q. Now, did there come a time when Greater Buffalo made a commitment to one of its plants, one of the newspapers for which it printed, that it would build a plant in the southeast?

A. Yes, we did.

Q. I show you Exhibit D-5 for identification, and ask you if you can identify that as a letter, a copy of a letter, from the files of Greater Buffalo Press?

475 A. This was taken out of our contract file with the Atlanta Journal Constitution.

Q. And is that file kept in the ordinary course of your business?

A. Yes, we still have the file.

Q. And this is a record from that file kept in the ordinary course of business?

A. That's right.

Q. Now, do you recall——

Mr. CARLSON: Excuse me, just a moment.

Mr. MOORE: I was going to let you read that. You have two of you there. It is a short letter. I was trying to hurry. If you want to hold up proceedings, why all right.

I will offer this letter in evidence.

Mr. CARLSON: No objection.

The COURT: Received.

The CLERK: D-5 marked in evidence.

(Whereupon Exhibit D-5 was marked in evidence.)

By Mr. MOORE:

476 Q. Do you recall the time when Greater Buffalo acquired the stock of the International Color Printing Company?

A. Yes, I do.

Q. And was there any change in the management of International subsequent to that acquisition?

A. No change in the management.

Q. Were there changes undertaken in the plant of International?

A. Yes, there were.

Q. In general, what was the nature of that change?

A. Well, the nature of the change was that they proceeded to adopt our methods of pre-registry, and also adopt our methods of running third page plates on their presses. They adopted our clip arrangements, they reworked all their cylinders in accordance with the way our cylinders are arranged, and other mechanical changes.

Q. How was that work financed at International? How did they pay for it?

A. Well, some of the work we had done, some of the stereotype machinery we had built for them, and a lot of the parts that were necessary to be made special by machine shop. We placed the orders from them and all of those changes
477 were billed through the Greater Buffalo Press.

Q. Was Greater Buffalo Press paid currently for this work?

A. No, because building some of the stereotype machinery was a matter that spread over a couple years' time.

Q. Well, what I am getting at is, was there a deferral of payment on some of this work?

A. Yes, there was, Mr. Moore.

Q. And to that extent Greater Buffalo financed the work, didn't it?

A. Not only to that extent, but also to the extent of the talent involved.

Q. All right. Now, do you recall when it was determined to build a plant in Sylacauga, Alabama?

A. Yes, I do.

Q. Who made that determination?

A. Mr. Walter Koessler.

Q. Now, appropos of that determination, did you go to Sylacauga?

A. Yes, I did.

Q. Did you go there once, or on more than one occasion?

A. I went there twice.

Q. What did you do while you were there? In general, what was the nature of your mission?

478 A. The first time I went there in company of Bill Gorman and Joe Clinton in January, 1956, I think it was.

Q. And what was the purpose of your trip?

A. Well, we went there to consult an attorney, to start the incorporation proceedings, and also to discuss with the people down there matters relative to the acquisition of the property.

Q. Now, after your trip to Sylacauga and after the determination to build the plant had been made, was there an arrangement made for the financing of this plant, who was to finance it?

A. Well, in the first instance——

Q. Well, finally.

A. Well, finally the Greater Buffalo Press financed the plant.

Q. Now, are you a director of Dixie Color Printing Company?

A. Yes, sir.

Q. And you were one of the incorporators, is that right?

A. One of the incorporators.

Q. Do you know who the original Board of Directors was, or the Board of Directors of that company?

A. Of Dixie Color?

479 Q. Yes.

A. Yes, it was Joe Gorman, John W. Koessler, Kenneth L. Koessler, Joseph D. Clinton and myself.

Q. And John W. Koessler and Kenneth Koessler are both officers of Greater Buffalo Press, are they not?

A. They are.

Q. Who owns the stock of Dixie Color?

A. The Greater Buffalo Press owns all of the stock of Dixie Color.

Q. Has anybody else ever owned any stock?

A. No one else has ever owned any stock.

Q. And what was the initial investment in Dixie Color by Greater Buffalo?

A. Fifty thousand dollars.

480 Q. And when was that made?

A. When cash was actually put in or subscribed, you mean, Mr. Moore?

Q. When was it subscribed?

A. It was subscribed in April of 1957 at the time of the incorporation.

Q. And subsequently the subscription was paid?

A. Subsequently the subscription was paid.

Q. Now, has Dixie Color ever conducted any operation of any kind?

A. Never.

Q. Now, how has Dixie Color been financed?

A. It has been financed entirely by Greater Buffalo Press.

Mr. MOORE: Now, will you mark this for identification?

The CLERK: D-6 for identification.

(Whereupon document referred to was marked Exhibit D-6 for identification.)

By Mr. MOORE:

Q. Now, I show you what has been marked Exhibit D-6 for identification, which appears to be five pages, containing handwritten entries and I ask you if you prepared that document?

481 A. No. That was prepared by Mr. O'Connor, our office manager.

Q. Well, was the document prepared from—

A. At my request.

Q. And are the entries taken off the books of account?

A. These were taken from the records, yes.

Q. And are you familiar with the records?

A. Yes.

Q. They are kept under your supervision?

A. They are.

Q. Now, I ask you to describe what that document reflects.

A. This is the list of payments month by month that were made by Greater Buffalo Press in the course of construction of the building at Sylacauga, Alabama.

Q. These are payments made for the construction of the plant itself, is that right?

A. Of the building.

Q. The first payments were made March 25th, 1957?

A. That's right.

Q. And this goes down to when?

A. December 31st, 1960.

482 Q. And in that period how much did Greater Buffalo pay out for the building at Sylacauga?

A. Well, Greater Buffalo paid for all of it.

Q. Well, how much?

A. There were some advances made as a matter of expediency to various contractors by International Color. The extent of that was \$79,000.00 and the other \$346,000.00 was paid directly to contractors by Greater Buffalo Press.

Q. All right—

A. But ultimately month by month we reimbursed International for whatever advances they made.

Q. Now, is this the fact, that for this period up to December 31st, 1960, Greater Buffalo had invested in that plant \$426,588.28?

A. That is correct.

Q. And included in that amount was \$79,745.40 which had originally been paid by International, is that right?

A. That's right.

Q. And that \$79,000.00 figure had been repaid to International by Greater Buffalo?

A. That's right, month by month.

Mr. CARLSON: If the Court please, I haven't been objecting to this leading of the witness because in some ways it
483 does save time but I think Mr. Moore should let the witness testify.

The COURT: Is there any dispute on that? Is there any dispute on those facts?

Mr. CARLSON: Yes, I believe there is, Your Honor, because our position is this, and I think it has been made known to Your Honor prior to this time, that this was a captive plant and although the facts and figures may be accurate or they may not be accurate, but they are entries made by these particular persons in the course of business for whatever business purposes they may have, so that in this particular chart, Mr. Moore did not establish the date it was prepared and he hasn't offered it in evidence but it is in the nature of not the best evidence of the figures and I am not saying I was prepared to object to it because of that, but this is prepared for litigation and it is in the nature itself of a self-serving declaration these
 484 people are making from the stand and I don't want them to carry this too far and I don't think I can permit Mr. Moore to carry this too far.

The COURT: You were leading somewhat.

Mr. MOORE: I was leading. I want to know from the Government right now if the Government takes the position that our books and records are false? Do you want to answer that?

Mr. CARLSON: The answer to that is no.

The COURT: Are you going to offer that in evidence?

Mr. MOORE: I want to offer this in evidence, Your Honor, and if there is a question of the best evidence, I am prepared—

The COURT: I am not concerned about that. It is a summary of the witness's testimony, as far as I am concerned and if you want to bring anything else out through this witness, why, he will have to testify.

Mr. MOORE: Well, I will offer it in evidence.

485 Mr. CARLSON: On the basis of the qualification that I have indicated to you and to expedite the proceedings, no objection.

The COURT: All right, received in evidence.

(Thereupon Exhibit D-6 for identification was received in evidence and marked D-6 in evidence.)

486 Q. In addition to the \$426,588.28 that Greater Buffalo spent on the plant itself, did Greater Buffalo make expenditures for machinery and equipment?

A. Yes, we did.

Q. And do you have a record, or do you know the extent of those expenditures up to a stated period?

A. Up to the 1st of October.

Q. The 1st of October, 1961?

A. 1961. \$380,000.00. Do you want the figure on the building up to October 1st?

Q. If you have it.

A. \$450,000.

Q. Now, in addition to the amounts paid by Greater Buffalo to International as reimbursements reflected in Exhibit D-6, did Greater Buffalo reimburse International for expenditures they had made on machinery and equipment for the plant?

A. Yes, we did.

Mr. MOORE: Will you mark this for identification?

(Thereupon Documents were marked D-7 for Identification.)

By Mr. MOORE:

487 Q. I show you D-7 for Identification and ask you if you can identify what those documents are?

A. These are copies of statements of account by International Color to Greater Buffalo Press.

Q. Those are what we would call invoices?

A. Yes, invoices.

Q. And running from a period of July 13, 1960, the final invoice is January 19, 1961?

A. That is right.

Q. And just to describe the exhibit, these are invoices that appears on their face for what?

A. For expenditures by International Color on Press 2022.

Mr. MOORE: I will offer these in evidence.

Mr. CARLSON: Do you have the originals on these with you?

Mr. MOORE: No. I can get them for you.

Mr. CARLSON: May I ask one question?

The COURT: Yes.

Mr. CARLSON: One question concerning these documents.

By Mr. CARLSON:

Q. Mr. Hammond, there is a note on the front: "Paid 1/30/61." There are no notes on the invoices, on the photostats of the other invoices as to paid.

488 A. You see, there is a running cumulative total there. Q. I want to establish whether or not, this is very simple, whether or not the notation on the front relates to all of the documents involved or just —

A. All of them. The sum total on that top page is the amount that was paid.

Mr. CARLSON: No objection.

The COURT: Received, mark it.

(Thereupon Exhibit D-7, previously marked for Identification, was marked and received in Evidence.)

The COURT: Mr. Moore, do you have any other exhibits for this witness?

Mr. MOORE: I think I may have a couple more, Your Honor.

The COURT: I have to make a phone call. I would like you to show them to him during the short recess. Then we will be prepared to deal with them.

Mr. MOORE: Yes, Your Honor.

(Thereupon a short recess was taken.)

489 (Proceedings after recess.)

By Mr. MOORE:

Q. Mr. Hammond, Exhibit D-7 in Evidence, these invoices you have described as invoices received by Greater Buffalo from International for material and work done on press 2022 is that correct?

A. That is correct.

Q. And they total \$130,933.18?

A. That's right.

Q. Were they paid?

A. They were paid.

Q. When?

A. In January 1961.

Q. Now, subsequent to receipt of these invoices did you receive additional invoices from International for work done on press 2022?

A. Yes, monthly invoices.

Mr. MOORE: Will you mark this for identification?

The CLERK: D-8 for Identification.

(Thereupon Photostatic Copies of Invoices were marked D-8 for Identification.)

490 By Mr. MOORE:

Q. I show you Exhibit D-8 for Identification, which purport to be photostatic copies of five invoices from International to Dixie Color, which refer to labor performed on press 2022, and ask you if those were received by Greater Buffalo?

A. Yes they were.

Q. And were they paid?

A. They were paid.

Mr. MOORE: I will offer this in evidence.

Mr. CARLSON: One question on these.

Mr. MOORE: Yes.

Mr. CARLSON: Do these represent accurate copies of the originals of the documents?

The WITNESS: They are photostats of originals.

Mr. CARLSON: Excuse me. Do they represent accurate copies?

The WITNESS: They are photostats of originals.

Mr. MOORE: I submit that is an answer Your Honor.

Mr. CARLSON: No objection.

The COURT: Received and marked.

The CLERK: D-8 marked in Evidence.

(Thereupon Photostatic Copies of Invoices previously marked D-8 for Identification were marked and received in Evidence.)

By Mr. MOORE:

Q. Now, prior to the receipt of the first invoice in D-7, which is dated July 13, 1960, did the books of Greater Buffalo reflect or contain any entries pertaining to press 2022?

A. Not prior to that time.

Q. And upon the receipt of these invoices were entries made in the books of Greater Buffalo reflecting the receipt of them?

A. They were.

Q. And how were they carried?

A. We carried that under our asset account, machinery and equipment for Dixie Color.

Q. Prior to the payment how did you carry the invoice which had been received but not paid.

A. We carried it as accounts payable.

Q. Then when you paid it, it was transferred to the asset account?

A. Well, no. At the time it was accrued on the books as an account payable, it was carried as an asset.

492 Q. Now, to date how much has been expended by Greater Buffalo on Press 2022 including the payments reflected in D-7 and D-8?

A. Approximately \$216,000.00.

Q. Are there any outstanding invoices from International to Greater Buffalo that haven't been paid, invoices for work respecting Sylacauga?

A. Everything up to the present moment is paid.

Q. Now, do you know whether or not a loss is presently being incurred by Dixie Color by virtue of the fact that this plant isn't in operation?

A. Yes, I do.

Q. Do you know the extent of that loss?

A. Approximately \$20,000.00 a month.

Q. You referred earlier to the standard contract—strike it out. Are you familiar with the manner in which the price is determined for the printing of color comic supplements by Greater Buffalo Press?

A. Yes, I am.

Q. And is there some formula used in connection with that?

A. We use a standard formula.

Q. Is that standard formula universally used with all your accounts?

493 A. That is right.

Q. And can you briefly describe how the formula works, how the price is determined?

A. Yes. We have a basic charge for an initial make ready.

Q. That is the charge for making ready the plates?

A. That is right, the press plates.

Q. All right. What else?

A. And the cost per thousand is computed by dividing the quantity into that basic cost. That gives us the cost per thousand for the make ready.

Q. What is the next factor?

A. The next factor is paper.

Q. Is a computation made of paper per thousand?

A. That is right, and ink.

Q. Now, in connection with paper, in making computations do you use the price you pay for the paper?

A. We use a delivered price we pay for the paper, plus a handling cost.

Q. Is the handling cost based on your own cost experience?

A. Based on our costs of unloading, storing and shipping the material.

Q. You don't make any money on the paper?

A. We don't make any money on newspaper print as
494 such, no.

Q. What is the next factor?

A. Ink.

Q. Is ink handled on the cost basis?

A. Ink is handled on the cost basis.

Q. What is the next factor?

A. The press time.

Q. That is labor?

A. Labor for running of the press.

Q. And what is the next factor?

A. Bundling.

Q. What is that based on?

A. Wrap and ship we call it. That is based on actual labor costs.

Q. What is the next factor?

A. That is it.

Q. Now, in your price structure do you pay the transportation cost or does the customer pay it, the newspaper?

A. We pay it in most instances.

Q. And are you reimbursed for it?

A. We are reimbursed, it is billed.

Q. So that the actual cost of transportation is borne by the——

A. By the newspaper.

495 Q. If there is an increase in transportation costs, they bear that?

A. They bear any increase.

Q. If there is a decrease they have the benefit of that?

A. They receive the benefit of the decrease.

Q. Now, are you familiar with the runs presently printed by Greater Buffalo under the contracts that Greater Buffalo holds with newspapers for delivery in the ten states that are set forth in the Government's proposed decree in this proceedings?

A. Yes, I am familiar with them.

496 Mr. MOORE: Just for the record, those states are Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North Carolina. Now, would you mark this, please?

The CLERK: Exhibit D-9 for Identification.

(Thereupon Document was marked Exhibit D-9 for Identification.)

By Mr. MOORE:

Q. Now, I show you a document which has been marked Exhibit D-9 for Identification and ask you if you prepared that document?

A. I did.

Q. And just to shorten it, if I can, does this document contain the locations of the newspapers in these ten states?

A. Yes, it does.

Q. Where the printing of the colored comic supplement is done at Dunkirk?

A. That's right.

Q. Now, are all of these contracts of these six newspapers held by the Greater Buffalo Press?

497 A. Held by the Greater Buffalo Press.

Q. What about Fort Lauderdale?

A. Fort Lauderdale, actually that is an N.E.A. account.

Q. And the circulation reflected by this exhibit for identification shows a circulation in fours of 3,434,000 per week, is that right?

A. That is what it shows.

Q. Now, is it your understanding that this is the extent of the printing which would be permitted at Sylacauga pursuant to the Government's proposed order?

A. That is my understanding.

Q. Now, if the Government's order were interpreted to include any printing where Greater Buffalo was not itself the contract holder, it would eliminate Fort Lauderdale, would it not?

A. Yes, it would.

Q. So your total of 3,400,000 would be reduced by 187,000?

A. That's right.

Q. Now, have you also computed on this exhibit the weekly savings in transportation that would be enjoyed by these six papers?

A. I figure that would be \$1,348.54 a week.

Q. And how did you arrive at that computation?

498 A. I took the present rate from Buffalo to these destinations and the rate from Sylacauga to the same destinations and the difference represents the savings.

Mr. MOORE: I will offer this in evidence.

The COURT: Any objection?

Mr. CARLSON: As far as the weight of the evidence is concerned, I think this has very little weight and there will be no objection to it.

The COURT: All right, received.

(Thereupon Exhibit D-9 for Identification was received in Evidence.)

Mr. MOORE: Would you mark this document, please?

The CLERK: Exhibit D-10 for Identification.

(Thereupon Document was marked Exhibit D-10 for identification.)

By Mr. MOORE:

Q. Now, I show you Exhibit D-10 for Identification and ask you if you prepared that?

A. Yes, I did.

Q. If I may ask a leading question to shorten it up, does this list represent a selection of runs which are presently printed at Wilkes-Barre by International for the account of King and for shipment to southeastern destinations?

A. It does.

Q. And this list does not contain all of those runs in the southeast, does it?

A. No, it does not.

Q. And were these selections made to illustrate transportation savings that would be effected if these runs could be printed at Sylacauga?

A. Yes. These are the larger ones and there are eight on here, believe.

Q. And if these eight runs were printed at Sylacauga, that would increase the production there by how many fours?

A. 4,449,000.

Q. And what would be the transportation savings per week?

A. The transportation for this group of newspapers would be \$1,764.00 weekly.

Q. Per week?

A. Per week.

Mr. MOORE: I will offer this in evidence.

Mr. CARLSON: I would like to ask a question about it. Did you prepare this yourself?

The WITNESS: Yes, sir.

Mr. CARLSON: Did you prepare it from the books of International? Did you get your information from the International? Did you get your information from the International books?

The WITNESS: Yes.

Mr. CARLSON: Okay.

The COURT: Received.

(Thereupon Exhibit D-10 for Identification was received in evidence.)

By Mr. MOORE:

Q. Now, you are, as you testified, fairly familiar with the total investment in the Dixie Plant at Sylacauga?

A. Yes, I am.

Q. And you have been involved in the financial end
501 of this business for how many years?

A. Thirty years.

Q. In your opinion can the Sylacauga plant be operated profitably on a production limited to four million fours per week?

A. I would say no.

Q. And in your opinion what is your opinion as to the volume that is necessary there to insure a profitable operation.

A. Well, when you say insure, Mr. Moore, that is——

Q. Well, to make it profitable or possible?

A. Well, we hope—I think it would require a minimum of seven or eight million four-page sections to make it feasible.

502 Mr. MOORE: Now, turning to another subject, I am going to mark this. Will you mark this for identification, only?

The CLERK: D-11 for identification.

(Whereupon a document was marked Exhibit D-11 for identification.)

The COURT: I would like to ask the witness a question. You just expressed the opinion that you would have need of some eight million fours in Sylacauga in order to show a reasonable profit.

The WITNESS: Yes.

The COURT: Assuming that were to be done, what is your opinion as to the future of your plant in Wilkes-Barre?

The WITNESS: Well, that would reduce the Wilkes-Barre operation by about ten percent of what they are presently doing.

The COURT: Let's assume you don't get any of this.
503 possible business from Philadelphia and other eastern papers.

The WITNESS: I think that the Wilkes-Barre plant would still remain on a profitable basis.

Mr. MOORE: Will you stipulate that D-11 for identification is a survey referred to in the affidavit, the original affidavit

of Mr. Carlson in this proceeding, which is referred to as the Gorman survey?

Mr. FELDMAN: What year is that?

Mr. MOORE: 1955.

Mr. CARLSON: What page are we on?

Mr. MOORE: I just wanted to take the book first.

Mr. CARLSON: I haven't had a chance to compare these two copies.

Mr. MOORE: Well, subject to correction.

Mr. CARLSON: Yes, on that basis, subject to correction, I so stipulate.

Mr. MOORE: Will you mark this please?

The CLERK: D-12 marked for identification.

504 (Whereupon a document was marked as Exhibit D-12 for identification.)

By Mr. MOORE:

Q. Now, I show you Exhibit D-12 for identification and ask you if that represents a copy of the last summary page in D-11 for identification?

A. Yes, it does.

Q. And is that a summary of the so-called 1955 Gorman survey of the market?

A. That is what it is.

Q. Of the ready print market, he calls it?

A. That's right.

Q. The ready print is color comic supplements in the trade, is it not?

A. That's right.

Mr. CARLSON: May I see this? Your Honor, excuse me. This is one that Mr. Moore did not show me at the recess. That is why the little delay.

The COURT. All right.

Mr. MOORE. I am sorry. I thought you were very familiar with it because you made a rather protracted affidavit

505 on the subject?

By Mr. MOORE:

Q. Now, directing your attention to this exhibit, D-12 for identification, the so-called Gorman survey for 1955, purports to show the printing in fairs at various color printing plants, does it not?

A. That's right.

Q. And the line marked "total", is the total at these various plants?

A. That's right.

Q. Now, I note the last item on that page, "O. P.", what does that stand for?

A. Owned Plants.

Q. And what is meant by "owned plants"?

A. That means newspapers who print their own sections, home plants, owned plants it is called.

Q. And, the next item proceeding to the left is marked "Hearst".

A. Hearst.

Q. And what printing is that?

A. Well, that is the printing that they do for themselves substantially in their Chicago and San Francisco plant.

506 Q. And in Mr. Gorman's survey of the market he included those number of fours in the total, did he not?

A. He showed them as part of the market.

Mr. MOORE. Does your Honor want to have one of these before you?

The COURT: I have one.

By Mr. MOORE:

Q. Now, are you familiar with the affidavit made by Mr. Carlson in this proceeding, the original affidavit?

A. Yes, I am.

Q. And did you make an analysis of that affidavit, the figures contained in that affidavit with reference to the Gorman survey?

A. I did.

507 The COURT. I want to ask the witness a question. Is Sylacauga presently equipped to turn out seven to eight million fours at this time?

The WITNESS. It is equipped to do it.

The COURT. You mean you have your machinery?

The WITNESS. They would probably turn out considerably more than that.

The COURT. What I am trying to say, the International plant in Wilkes-Barre, as I recall the witness Gorman, he said they had pre-registry installed there and now the production has gone up twenty-five percent of that as a result of that, per printing hour. You don't have any need of that machinery in Sylacauga to meet your commitments?

The WITNESS. We have the same type of machinery in Sylacauga.

The COURT. You are fully equipped?

The WITNESS. Fully equipped.

The COURT. All right.

By Mr. MOORE.

508 Q. You have copies of the analysis you prepared of the Carlson affidavit?

A. Yes, I have them in my bag.

Mr. MOORE. Will you get those for me?

The WITNESS. I better get them, may I?

The COURT. Yes. While the witness is looking for that why don't you run across the top and give me what those initials mean.

Mr. MOORE. Yes. I think we have no dispute about it. I.C.P. stands for International Color Printing. G.B.P. stands for Greater Buffalo Press. B.C. is Buffalo Color Press. Acme is Acme Printing. E.C. is Eastern Color. W.C. is World Color. S.C. is Southern Color and F.W. is Fort Worth.

The COURT. All right. Thank you.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked D-13 for identification.)

By Mr. MOORE:

509 Q. I show you Exhibit D-13 for identification and ask you if this is an analysis you prepared of the Gorman survey?

A. Yes, sir, it is.

Q. And of the Carlson affidavit?

A. Yes, it is.

Q. Now, are all of the figures on this exhibit D-13 for identification taken directly from the Gorman survey which is marked D-14?

A. D-12, isn't it?

Q. D-12, I'm sorry.

A. They are taken from D-12. This was 13?

Q. Yes. Now, in your first column you have "per affidavit fours percentage of the market," what does that column—

A. That was the way Mr. Carlson showed it in his affidavit. However, he did not show the percentage figure, he showed the

number of fours. In that same manner, he starts off with all supplements, one hundred thirty-two million eight thousand and three.

Q. Now, did you find that Mr. Carlson in his affidavit in setting up the number of fours attributed to Greater Buffalo included in that total approximately two million fours which were Canadian printing?

A. Yes, that total of 28 million that he has listed for
510 our account includes 1,954,850 of Canadian circulations.

Q. Now, did you in the next column adjust that figure to eliminate the Canadian circulations?

A. I eliminated that.

Q. Did you find too that Mr. Carlson in computing International's total had in fact excluded their foreign market from it?

A. Yes. He only shows there 27,237,000 whereas under the heading of I.C.P. there is a Spanish market of 546,000, and the Stars and Stripes, 190,000 that he dropped off.

Q. In your second column did you exclude that foreign printing, both in the total market and from the printing attributable to Greater Buffalo and International?

A. You mean in column three?

Q. In column three.

A. All the foreign market was excluded.

Q. In arriving at his percentage, Mr. Carlson disregarded entirely, did he not, the printing which was done by newspapers themselves of their own supplements?

A. To the extent of 44,208,581.

Q. And did he disregard the printing that was attributed to Hearst in the Gorman survey?
511

A. He ignored that on his affidavit.

Q. And in your third column?
512

A. He also dropped off Fort Worth and World Color.

Q. Well, in your third column you put those back in?

A. I put them back in where they belong.

Q. And in the fourth column you figured a percentage just of the printing done by the Color Comic Supplement printers?

A. Well now, let me digress —

Q. Well, is that what it was? Is that a percentage?

A. That is a percentage, that's right.

Q. All right, and in the fifth column have you computed the percentage applicable to each of these printers for the entire market reflected in the Gorman survey?

A. Yes, I did.

Mr. MOORE. I will offer Exhibit D-12 and Exhibit D-13 in evidence.

Mr. CARLSON. No objection.

The COURT. All right, received.

(Thereupon Exhibit D-12 and D-13 were received and marked D-12 and D-13 in evidence.)

Mr. MOORE. You may ask.

513 The COURT. I wonder if I could ask, as far as this subject. You are familiar, I take it, with the operation of Sylacauga down there and what is expected to be done if and when it opens. Do you know of any agreement, written or otherwise, whereby Greater Buffalo Press or the Dixie Color Corporation or any other subsidiary of Greater Buffalo Press has an arrangement with Hearst or any subsidiary of Hearst to buy newsprint at a price?

The WITNESS: We have no arrangement with anybody. We have no newsprint arrangement or commitment.

The COURT: Do you recall there was some testimony that Hearst has a contract—

The WITNESS: Hearst had a contract at one time.

The COURT: You have nothing in the way of any option to buy any portion of that newsprint from Hearst?

The WITNESS: No.

CROSS EXAMINATION

By Mr. CARLSON:

514 Q. Mr. Hammond, I hand you defendant's Exhibit number 4 and ask you what date that exhibit bears?

A. May 2nd, 1961.

Q. Does that mean it was prepared on that date, this exhibit was prepared on that date?

A. It was prepared—I think that was an issue date of a Sunday newspaper. It may have been prepared a few days later. I haven't got a calendar handy but I think—

Q. You testified it was about that—

A. I think probably May 2nd is an issue date of a newspaper.

Q. I think you testified—

A. No, it isn't Mr. Carlson. That must be the day I prepared it.

Q. I don't recall whether or not you testified that this was prepared for the purpose of this litigation. Did you so testify or not?

A. I didn't.

Q. Was it?

A. I didn't testify to that.

Q. Was it?

A. Yes, it was.

Q. Was this exhibit prepared for the purpose of this litigation?

A. Yes, it was. I prepared that in anticipation of the
515 trial proceeding in July which never took place.

Q. I think you also testified that there was a right in newspapers that are customers of Greater Buffalo Press to cancel on sixty days notice?

A. That's right.

Q. Is that an automatic cancellation that——

A. They may cancel for any number of reasons, four or five reasons.

Q. So that it is not cancellable at will?

A. Practically they may cancel if they are dissatisfied with the quality of the work, the service, the cost, if they discontinue their publication. I can't remember all of them, but those are the essential ones that gives the newspaper the right to cancel the contract on sixty days notice.

Q. This relates to cancellation for cause, is that correct?

A. Well, sure, you have got to have a reason.

Q. I think you also testified in the course of your examination by Mr. Moore as to various and sundry mechanical changes that were made at Wilkes-Barre as a result of certain information obtained from Greater Buffalo Press, is that correct?

A. Yes.

516 Q. How did you obtain your information concerning the changes that were made at Wilkes-Barre?

A. Well, in my position I consulted on a lot of matters and these things were discussed in my presence; I knew that they were being undertaken; we had those plans and doing those things.

Q. Are you a mechanical man, Mr. Hammond?

A. No, I am not.

Q. You testified that Greater Buffalo Press financed the Sylacauga plant?

A. That's right.

Q. In the last instance. You started to say that somebody financed it initially, I thought you started to say. Is there a difference in who financed the plant initially and who finally financed it?

A. Nobody put a nickel in it if that is what you mean.

Q. There is no other financier?

A. There is nobody else.

Q. That is your testimony?

A. That is what I am saying.

Q. What did the plant at Lufkin cost, Mr. Hammond?

A. Well, I would say now that our investment in the Lufkin plant is pretty close to \$2,000,000.00.

Q. What did the plant at International cost?

517 A. You mean what did we pay for it?

Q. Yes?

A. \$575,000.00.

Q. What is the total production at Lufkin today?

A. In terms of what?

Q. In terms of fours per week.

A. Well, I don't deal in those figures. To me this four-page gimmick has no particular meaning.

Q. I think you testified——

A. I can give you the number of tens of newsprint if that would help.

Q. I would like if you can remember it to describe it in terms of fours.

A. I think we are presently using ten thousand tons of newsprint at Lufkin.

Q. What does that mean in terms of papers?

A. In terms of papers, a four-page section weighs fifty pounds a thousand, so if you want me to figure it out——

Q. I take it you are saying that you cannot establish for Lufkin the number of fours per week printed from your experience and your knowledge of this industry, is that correct?

A. I could by a matter of simple division, if you want me to take the time to do it, I will compute it for you.

518 Q. Can you approximate it out of your head?

A. No, I can't.

Q. Is it under five million?

A. No. Just a minute, I will figure it out for you.

The COURT: Do that during the noon recess. Maybe Mr. Koessler will probably know it, he will probably know the exact figure.

Mr. CARLSON: I wasn't so much interested in the exact figure, Your Honor, but this witness has testified as to certain aspects on profits. In order to do that, it is our position that he needs to know——

The COURT: We will pick that up this afternoon as a matter of fact.

519 By Mr. CARLSON:

Q. Do you know what the total production at the present time in terms of fours per week is at Wilkes-Barre, approximately?

A. I think around thirty million, or something like that.

Q. About thirty million?

A. Yes.

Q. If you know, do you know on whom the complaint in this action was served at Greater Buffalo?

A. It was served on me.

Q. It was served on you. Do you remember the date?

A. It was some time in January. I think the date of the complaint was January 6th.

Q. That is correct.

A. I don't know just exactly what date it was served. I made a record of it, though.

Q. You testified a few moments ago that according to your calculations, or your thinking, there is a twenty thousand—and you correct me if I misstate—there is a twenty thousand dollar a month loss at present with respect to Sylacauga's remaining closed, is that correct?

A. That is about what it is costing us, Mr. Carlson.

Q. That is out of pocket cost?

520 A. Yes. What do you mean by "out of pocket"?

A. Well, you are an accountant.

The COURT: You are not figuring loss of profit, are you?

The WITNESS: No, I am just figuring the value of the use of our money is included in that figure.

By Mr. CARLSON:

Q. What else is included in the figure?

A. Depreciation and all the fixed charges of maintenance

and insurance, and heating the place, and all the usual things that go into maintaining a building.

Q. You testified also as to a standard formula that was used?

A. Yes, I did.

Q. In pricing at Greater Buffalo. Is that standard formula going to be used in pricing at Sylacauga in the event that the Sylacauga plant opens?

A. I think so. It hasn't been discussed.

Q. Has not been discussed?

A. We haven't decided what these—we will use the same formula, but what prices will prevail in Sylacauga, I don't know. It depends what work goes in there, whether it is some of Hearst's work, or our own work, or what goes in there.

Q. But it has been discussed then, is that what you are saying, but it can't be calculated until you know what will go in? Is that what you are saying?

A. We will have to know more than what we know now.

Q. You broke down for the Court certain of the costs that go into the standard formula, so-called, that you described?

A. Yes.

Q. You did not identify, at least if you did I missed it, any item as profit in that standard cost?

A. That is built into the figures, Mr. Carlson.

Q. Put into which figures?

A. In all the labor figures.

Q. Did you describe that as press time, or labor cost? How did you describe it?

A. There is labor cost in the make ready, there is labor cost in the press time, and there is labor cost in the wrapping and shipping. Now, the overhead and profit is built into those costs.

Q. You testified concerning transportation matters that would be concerned in a commencement of printing at Sylacauga. In connection with that, is it your plan, or your decision, that transportation savings will be passed on to the customers in the event the Sylacauga plant opens?

A. That is the way it is now, and that is the way it will be.

Q. The plant is not open now, is it?

A. That is the way it will be if the plant is opened. Any transportation savings will accrue to the newspapers.

Q. Now, regarding the Defendant's Exhibit 12, do you have that before you, Mr. Hammond?

A. This is 13.

Q. Defendant's Exhibit 12?

A. No, I haven't.

Mr. MOORE: I have a copy.

Mr. CARLSON: Thank you.

By Mr. CARLSON:

Q. You have identified the breakdowns involved on here and I think they have been identified for the Court. International Color Printing Company is the first column, is that correct?

A. I.C.P. is International Color Printing, G.B.P. is Greater —

Q. I didn't want you to identify all of them. We will save a little time here. I just wanted to know if Inter-
523 national—

A. The first one is International.

Q. Is that the same International Color Printing Company that was acquired by Greater Buffalo Press in about June, 1955?

A. That's right.

Q. One has been identified. The third column is Buffalo Color Press?

A. That's right.

Q. Is that the same Buffalo Color Press, or has that company been acquired by any other company reflected on this chart?

A. The Buffalo Color Press in 1955 was owned by the Scripps-Howard newspaper chain.

Q. Has it been acquired by any of the other companies reflected on this chart?

A. The company hasn't been acquired, but the runs—

Q. Has the assets?

A. — The runs that were represented here at that time are now being printed by the Greater Buffalo Press. The Buffalo Color Press discontinued operations.

Q. I note that you testified—excuse me, we are referring to Defendant's Exhibit 13, now, the following exhibit, and I think you have one before you. I note that you have testified

524 that there was a two million dollar Canadian figure in column four—no, column three.

A. Column one.

Q. And in the Carlson affidavit that you have removed for this purpose?

A. It was in column one I removed that. In Column three you will see that there is a difference of one million nine hundred thousand dollars.

Q. Yes. You testified there was a difference. How much would that difference make in regard to the percentages that you use, do you know that, sir?

A. Well, now, I don't know what you are driving at.

Q. How much would that alter the percentage that you have regarding Greater Buffalo Press? You testified you took it out.

A. I don't know. There in Column three there is other factors that enter into these percentages. In Column one, for instance, Mr. Carlson, you don't include—

Q. I am asking a specific question, Mr. Hammond, not an argument on the chart as a whole. I am asking do you know what the percentage would have been as reflected in your columnization here, which is Column five, if you had not removed the Canadian one million nine hundred thousand dollars?

525 A. Oh, in Column five?

Q. Yes. What difference would it have made in percent?

A. Oh, maybe two percent, one and one-half percent, two percent.

Q. Thank you. That is all I was interested in.

Mr. CARLSON: Excuse me just a moment, your Honor. I am trying to locate something.

By Mr. CARLSON:

Q. I believe you submitted an affidavit in this cause that is presently a part of the record in this court, is that correct, Mr. Hammond?

A. Yes.

Q. I hand you a copy of this affidavit as furnished to the Government, and ask you to read on page three of the affidavit a sentence appearing in the second paragraph. Would you read it out loud, please?

A. "Greater Buffalo Press does not employ salesmen to solicit the printing of color comic supplements."

Q. Is that a correct statement, Mr. Hammond?

A. Yes, it is.

Q. You also testified under sworn deposition, 502
526 United States Court House, April 18, 1961?

A. That's right.

Q. Do you remember making a statement in that deposition and I refer to——

The COURT: I will give you a chance to reorganize this cross examination. We will recess until two o'clock.

(Whereupon at 12:25 p.m. a recess was taken until
527 2:00 p.m.)

(Proceedings resumed pursuant to recess commencing at 2:00 p.m.)

The COURT: All right, Mr. Carlson.

WILLIAM J. HAMMOND, having been previously duly sworn resumed and further testified as follows:

CROSS EXAMINATION

By Mr. CARLSON Continued:

Q. Mr. Hammond, before we recessed you read out loud to the Court a statement in your affidavit, which is part of the record in this proceedings, that states Greater Buffalo does not employ salesmen to solicit the printing of color comic supplements. I think you stated that was a true statement?

A. That is right.

Q. In your deposition, which is also a part of the record in this matter, you stated at page two three six, "I talked to our salesmen, I talked to Leonard Hirscheiser, one of our salesmen." Is there a difference between your characterization of Leonard Hirscheiser as one of your salesmen and what you are talking about in your affidavit?

A. That is right.

528 The COURT: What is the difference between these men?

The WITNESS: In the affidavit it is referring to salesmen calling on newspapers in the sale of color comic supplements. Mr. Hirscheiser is a salesman who handles commercial sales. It was a different branch of our business.

By Mr. CARLSON:

Q. He doesn't——

A. He doesn't handle newspaper accounts.

Q. (continuing) Handle color comic supplements sales at all?

A. No, he doesn't.

Q. Your statement was "one of our salesmen", who are the others?

A. Well, we have Mr. Robert Lalor, who represents us in New York City.

Q. Is he a salesman of color comic supplements?

A. No, he handles commercial sales.

Q. Only?

A. Only.

Q. No color comic supplements?

529 A. That is right.

Q. Who did you regard as your competitors in this business, referring now to the year 1954, who did you regard in 1954 as your competitors in the color comic supplement printing industry?

A. In the sale of them, Mr. Carlson, or in the production of them?

Q. Let's take them separately; who are your competitors in the production?

A. In production?

Q. Yes.

A. Well, all the plants that were in existence. Eastern Color, Star Color, Southern Color Print, World Color, Acme. I think that about covers it.

Q. Any others?

A. No, not that I can think of.

Q. Did International Color print any color comic supplements in 1954?

A. In the production?

Q. In the production?

A. Yes, that is right, International Color.

Q. Who were your competitors in 1954 in the sale of color comic supplements?

A. Mainly King Features Syndicate.

Q. Any others?

530 A. N.E.A.

Q. Do you know whether any of the other competitors in the production, that you have named, have salesmen?

A. I am not aware of it.

Q. Pardon me?

A. I am not aware of it.

Q. Do you know whether Eastern has any salesmen?

A. I am not aware of that.

Q. Do you know Ham Moore of Eastern?

A. No, I don't.

Q. Do you know whether Acme has any salesmen?

A. I am not familiar with it, I am not familiar with their operation.

Q. Do you know Mr. Richter of Acme?

A. No, I don't.

Q. Do you know whether Southern Color Print has any salesmen?

A. No, I don't.

Q. You do not?

A. I know through this proceeding what the relationship is now.

Q. Have you made any statements as a part of the record in this proceeding as to whether or not Southern Color Print does have salesmen?

A. I understand they have an arrangement with Atlantic Features. Atlantic Features is represented by Hornaday.

Q. Now, there was one matter I would like to clear up, maybe we can clear it up with you, Mr. Hammond. As far as the question of manning is concerned—do you understand the term "manning"?

A. I understand what it is.

Q. Does it relate to a particular kind of labor within a color printing plant or does it relate to the entire labor force in that plant, as the term is used in the industry, from your experience?

A. Generally speaking, it is in regard to operating the presses.

Q. Pressmen?

A. Printing presses.

Q. Pressmen and other persons who work on presses?

A. That is right.

Q. If I were to ask you a question regarding manning, you would know that that referred to pressmen and people who work on presses?

A. I know what the reference is, yes.

Q. Are you familiar with the prospective labor costs at the Sylacauga Plant in the various classifications of persons, plant personnel who work there?

A. Who will work there?

532 Q. Well, who are scheduled to work there. You told the Court, I believe, you are all ready to go?

A. Yes.

Q. That is, these people are lined up. Do you know what the wage scales are as far as those persons?

A. What the wage scale will be?

Q. Yes, are you familiar with the wage scales of the various classes of persons who will work in the plant?

A. I don't know what the wage scale will be at this moment.

Q. Do you know generally what it is?

A. Probably about on a par with what is paid elsewhere in the country.

Q. Comparing it with wage scales at Dunkirk, do you have knowledge of whether it will be lower, higher, or about the same?

A. Somewhere in that area, I wouldn't know. Those are usually negotiated.

Q. Did you have an answer to the question "about the same"?

A. I imagine that they will ultimately wind up about the same as we pay in other places.

533 Q. A little earlier I think you testified that you had a two million dollar investment in Lufkin, is that correct?

A. Approximately.

Q. And I think you testified that there were approximately seven million per week in there, is that correct?

A. I didn't testify to that, but since we have discussed it, I figured it out to be about eight million a week.

Q. About eight million a week?

A. Yes.

Q. And you also testified as to the investment in Sylacauga as being in the neighborhood of nine hundred thousand dollars, am I correct on that score, nine hundred sixty-five, or sixty-eight, is that about correct?

A. Excluding the land.

Q. Excluding the land?

A. Excluding of the land, yes.

Q. Does Greater Buffalo or Dixie pay for that land?

A. No.

Q. Now, based on your own knowledge, does the plant at Lufkin make a profit?

A. Yes, it does.

534 Q. Would you explain to the Court the reason that with an investment of two million dollars, printing seven hundred thousand, or seven million fours, in Lufkin, comparing that——

Mr. MOORE: I don't want to interrupt, but he testified eight million.

Mr. CARLSON: Excuse me.

By Mr. CARLSON:

Q. On the basis of the eight million runs that you testified as production at Lufkin and the two million dollar investment, comparing that with the nine hundred sixty-five thousand dollar or so investment at Sylacauga, would you tell the Court why, or why not the plant at Sylacauga cannot make a profit on three million four hundred thousand fours?

A. That is a pretty hard question to answer, Mr. Carlson.

Q. Well, I think you stated that they could not.

A. I don't think the question of profit is that relative to investment, necessarily.

Q. Are you stating that you cannot make that comparison, that I have not given you the right basis on which to make such a comparison?

535 A. I couldn't do it without some consideration and thinking about it and doing some calculating.

Q. If ten percent of the printing is moved out of Wilkes-Barre, can you advise the Court, tell the Court what percentage of the labor employed at Wilkes-Barre will be laid off as a result of that?

A. I couldn't answer that.

Q. Based on your experience in the industry, can you give the Court some idea as to what the effect will be?

A. No, because it might develop that other work might be put in there and we might develop other work. I wouldn't know whether it is necessary to lay off anybody.

Q. Well, I was posing the question purely on the basis of ten percent of the work out of Wilkes-Barre, and ask you, if from your experience in industry, you could give the Court some idea of the impact, the effect that would have, based on your experience, in regard to personnel employed at Wilkes-Barre under those conditions?

A. I couldn't tell you what that impact might be.

Q. You do not know?

A. I don't know.

536 Mr. CARLSON. I have no further questions, your Honor.

REDIRECT EXAMINATION

By Mr. MOORE:

Q. Well, now, without regard to the operation at Lufkin, are you still of the opinion that the Sylacauga plant cannot be operated profitably on four million fours?

A. When you say four million fours, Mr. Moore, I think we are talking about three million four hundred thousand fours.

Q. Well, I am asking you four million fours?

A. Four million fours, I would say not.

Q. And in this business there is no exact ratio is there, which would state that a two million dollar plant needed eight million fours, and therefore, a one million dollar plant only needed four million fours?

A. No.

Q. Now, counsel asked you about the plans for pricing in Sylacauga. Do you know whether or not it is intended in Sylacauga to generally price according to the same formula that Greater Buffalo has used over the years?

537 A. Yes, I think that is a logical conclusion that we will use the same formula.

Q. And essentially it will be the same price for the same product?

A. Essentially the same price for the same product.

Q. And the great advantage of Sylacauga printing lies in the transportation savings that will be effected to the newspapers in the southeast, does it not?

A. That is the whole purpose of the plant.

Q. Now, they talk about the purchase of the stock of International. What did you say the purchase price was on that?

A. Five hundred seventy-five thousand dollars.

Q. And that purchase price was negotiated on the basis of the book value or the net worth of the company at that time, was it not?

A. At that time.

Q. That was what the——

A. What the net worth showed on their balance sheet.

Q. The net worth shown on their books. International doesn't own its main plant, does it?

A. International owns no property.

Q. Well, don't they own a smaller plant?

A. Oh, yes. They own a little plant called the Parsons plant. It is very small.

Q. But the main property, mill, is on rented—

538 A. That is on rented quarters.

Q. And at the time of the acquisition of the stock, was the machinery at International pretty well depreciated?

A. It was pretty well depreciated, yes.

539 Q. And since the acquisition of the stock of International by Greater Buffalo, how much money approximately has been invested in the fixed assets of International?

A. Well, this would be a guess, but I would say over a half a million dollars.

Mr. MOORE: That is all.

RECROSS EXAMINATION

By Mr. CARLSON:

Q. Just one question, Your Honor. Did you have familiarity with the transaction by which International was bought?

A. Did I have familiarity with it?

Q. Yes, were you involved in the transaction?

A. Yes, I was.

Q. From your knowledge of the books, could you tell the Court how much in the way of machinery and assets International acquired during the years 1948 to 1954 preceding the acquisition?

A. The acquisition of machinery from 1948 to 1954?

Q. Yes. In effect, what I am asking is how they added to their assets during that period of time, if you know.

A. I don't know.

Q. You do not know?

540 A. No, I don't.

The COURT: Is that all?

Mr. CARLSON: That is all.

The COURT: That is all.

(Witness excused.)

Mr. MOORE: That concludes our proof, Your Honor.

The COURT: Any rebuttal?

Mr. MOORE: Well, I have one exhibit which was not entered. The gentleman was examined and I have this—

Mr. CARLSON: This is not in and you propose to offer it at this time?

Mr. MOORE: Yes.

Mr. CARLSON: If the Court please, I think there was objection made on this at the time and the Court ruled on it and I think the matter has gone in evidence, I am not sure, but if it has not——

Mr. MOORE: Is this the objection involved with——

Mr. CARLSON: This is the objection as to the materiality of it.

The COURT: I haven't asked you gentlemen from time
541 to time if you wished to cross examine. I assume if you had wanted to, you would have mentioned it.

Mr. CLIMENKO: That is correct.

Mr. HAYNES: That is correct.

The CLERK: Exhibit D-4 marked in evidence.

(Thereupon Exhibit D-4 for identification was received and marked Exhibit D-4 in evidence.)

The COURT: All right, swear your witness, Mr. Carlson.

ROBERT D. SMITH, called as a witness by the plaintiff and being first duly sworn, testified as follows:

The CRIER:

Q. Your name?

A. Robert D. Smith.

DIRECT EXAMINATION

By Mr. CARLSON:

Q. Mr. Smith, would you state your name and address for the record, please?

A. My name is Robert D. Smith. I live in Newport
542 News, Virginia. I am general manager of the Daily Press Incorporated which owns the Southern Color Print Corporation of which I am general manager and assistant treasurer.

Q. Will you describe to the Court just in general terms what business the Southern Color Print Corporation is in?

A. The Southern Color Print Corporation is in the business of producing color comic sections for newspapers.

Q. How long have you been connected with that business?

A. I have been connected with the Southern Color Printing since 1950.

Q. How long have you been in the newspaper business?

A. Since graduation from the University in 1923.

Q. Is that continuously all that time?

A. Yes.

Q. In the course of your experience in the newspaper industry and the printing industry, have you come to have knowledge of cost factors that go into the printing of color comic supplements?

A. I have done a lot of estimating on the cost of producing color comic sections and in my early association with the Southern Colorprinting, my job was to figure out costs of each individual run to determine some factors that could be
543 used in bidding for new work and I made sort of a study of it. I took accounting and went to business schools and so on in my youth, so I know something about accounting procedures.

Q. In the course of your experience in the printing industry, have you become acquainted with wages in the color printing industry, wage scales, in the country generally?

A. I have had to do that in connection with my job since one of my principal assignments is to negotiate with labor unions in which I am negotiating with nine or ten regularly so I keep posted on labor rates and various crafts in the printing industry. Our newspaper is a member of the clearing house of the American Newspaper Publishers Associations which maintains a file of labor rates throughout the whole United States and these files are kept up on a weekly basis with my office with the changes made in some central clearing house so it is possible for me to tell not only what the hourly rates are but all the fringe benefits, vacations, sick leave and so on because I need that information in our negotiations.

Q. Over the past ten years have you regularly referred to such records and studied them and kept up on them?
544

A. There isn't a day goes by when I don't study some angle.

Q. In the course of your duties have you become acquainted with the cost of newsprint in your area and in other areas of the country?

A. Well, in our area we have one standard price; it is a zone price. I am not familiar with what it is in all parts of the United States because the zones vary. We are in a zone where the price is \$134.00 a ton.

Q. What area does that zone cover?

A. It is in the New York zone. We have the same prices up and down the coast. We receive our newsprint by boat from Canada.

Q. Does it cover all of the coast, the east coast?

A. I think it goes down to as far as Charleston and I don't know what it is from there on down.

Q. Charleston, South Carolina?

A. Yes.

Q. In the course of your duties have you become acquainted with the manning of the presses in the color printing operation?

A. In the negotiations with the Pressman's Union, 545 manning is one of the major points of discussion. You do not operate a union shop without having a manning formula that is approved by both the union and the company after negotiations. This manning will vary from plant to plant in accordance with the condition of the machinery and the policy in effect and so on.

Q. You do know what the term "manning" is?

A. I do.

Q. You do know generally what manning conditions are?

A. Yes.

Q. What is the present production in terms of fours per week at the Southern Color Printing Plant?

A. The Southern Color Printing plant operates five shifts, one day and one night, of five each, making a total of ten shifts and the production in fours is made in 600,000 units.

Q. Does Southern Color Printing make a profit on that production?

Mr. MOORE: I am going to object to that, Your Honor. I think that he is starting to compare apples and bananas here. We have two different plants here and we don't know what the investment is.

546 The COURT: Well, the witness has just said that manning is one of the major factors and it depends on the condition of the machinery and I will receive it with that in mind.

By Mr. CARLSON:

Q. Well now, from your knowledge and experience that you have testified to concerning wage rates generally in this field, would wage rates in Alabama be higher, lower or about the same as they are in Newport News, Virginia at Southern Color Printing?

Mr. MOORE: I am going to object to that.

The COURT: Ask him if he knows.

Mr. CARLSON: Do you know, sir?

The COURT: Ask him if he knows as to the comparable scale of labor, whether he knows the rates prevailing, not only in Alabama but in Sylacauga and his station.

By Mr. CARLSON:

A. Do you know, sir?

A. I know about the rates at Birmingham, Alabama, where they have union contracts and they have wage rates
547 on file. I do not know about Sylacauga or that area because as far as I know there is no union contract on file there. There is a lower rate that prevails in Virginia—

Mr. MOORE: I object to that, Your Honor. That is wholly speculative. He is talking about what we might possibly be faced with when we sit down to the bargaining table in an area where he has never heard what the rate is and, in fact, there is no rate and for him to speculate—

Mr. CARLSON: May I say a word on this?

Mr. MOORE: And for him to speculate on what it is going to be, I claim that is immaterial.

Mr. CARLSON: May I say a word on this?

The COURT: Yes.

Mr. CARLSON: The defendants have had two witnesses who have speculated about prospective profits. They have also told Your Honor, I believe the witness Clinton, I believe and the witness Hammond, they have also told Your Honor that they are ready to go on two or three days notice. It is incon-
548 ceivable to me that if they are able to speculate on profits that they can't know some of these things that must affect the cost in the Sylacauga, Alabama area. I just don't see how it doesn't make common sense they they can pose the fact of profits on the operation without some knowleldge on these things.

The COURT: There may be a profit or there may not and I don't think you can have it from this witness. Sustained.

The WITNESS: Well—

The COURT: I just sustained the objection.

You don't answer that.

549 The COURT: If he wants to state, tell me how far Birmingham is from this particular town, and if he knows the prevailing union rate there, I will receive it.

Mr. CARLSON: That is the line of questioning I was going to pursue.

The COURT: How far is Birmingham from this town?

Mr. CARLSON: Forty miles, I believe, your Honor.

The WITNESS: Forty or fifty miles. I have driven it.

By Mr. CARLSON:

Q. Is it the largest metropolitan area in the neighborhood of Sylacauga?

A. That is right.

Q. Based on your knowledge of rates in Birmingham to which you have testified, can you state whether the rate for comparable skilled labor in a color plant in Birmingham, on the basis of Birmingham scale, will be higher than, lower than, or about the same as those in Newport News?

A. There is one point I would like to bring out in this discussion; that the color plant labor brings a little more money than the regular newspaper, black and white, pressmen on the black and white.

When you ask me the question about the color plant in Birmingham, what the rate would be, I wouldn't know. They have no color plants. The newspaper, the News-Herald—

Mr. MOORE: I object, based on the last statement, your Honor.

The COURT: Sustained.

Mr. CARLSON: I have no further questions, your Honor.

CROSS EXAMINATION

By Mr. MOORE:

Q. Mr. Smith, of course, your printing plant prints for two daily newspapers, does it not?

A. It is an entirely separate operation, Mr. Moore, separated from the other plants by a distance of three miles.

Q. Is it the same management that runs both plants?

A. No, we have a plant manager who operates the day to day operation of the plant. In other words, there are many, many days when I don't go near the plant. It is under this superintendent's management.

Q. This is the color plant?

551 A. Color plant, that is right.

Q. And you run the newspaper plant?

A. That is right.

Q. Of course, you keep the books of the color plant and the books of the newspaper plant together on your operating costs?

A. No, they are not. They are kept entirely separate under an accounting procedure with separate accountants that keep the books.

Q. Do you have two separate statements, financial statements?

A. That is right, two separate statements, monthly board meetings, and annual meetings and statements, all separate reports filed with the Government, all separate.

Q. Do you file a single income tax return?

A. No, sir, separate.

Q. Do you file a separate income tax return?

A. That is right, it is a separate corporation.

Q. And Southern Color Printing is owned by what corporation?

A. The Daily Press, Incorporated.

Q. And the Daily Press Incorporated owns what newspapers?

A. The Daily Press and the Times Herald, one morning, one afternoon.

Q. And those are papers published where?

A. In Newport News, Virginia.

Q. And then the color printing business though, as far as you are concerned, is a sideline to your publishing and newspaper business, isn't it?

A. It is a subsidiary.

Q. It is a sideline, isn't it?

A. Well, we have other sidelines too.

Q. This is one of them?

A. Yes. We have five corporations, this is one of them.

Q. Now, you own the other half, do you not, of this press 2022?

A. The numbers are both the same.

Q. It is the same press, isn't it?

A. I guess they were both operating separately. The 2022 that has been referred to previously was in Wilkes Barre and Sylacauga somewhere, the other press was operating in Baltimore.

Q. Press 2022 was originally one piece of machinery in Baltimore?

A. That is what they tell me.

Q. You bought half and Greater Buffalo bought half, is that right?

53 A. That is right. We were told that International Color had bought the other half, though. I never heard about Greater Buffalo until I came up here.

Q. Now, of course you are operating now at Southern Color practically your capacity for color comic supplements, are you not?

A. No, not according to what you would call capacity. We don't operate on Saturdays, we could operate a midnight shift, we don't.

Q. You are operating, would you say, at ninety percent of capacity?

A. No, it would be probably three-fourths if you took the extra days in.

Q. You are operating six days a week?

A. Five days.

Q. How many shifts?

A. Two shifts a day, ten shifts a week.

Q. Now, of course you filed an affidavit in this proceedings, did you not, opposing the opening of this plant at Sylacauga?

A. That is right.

Mr. MOORE: That is all.

The COURT: Do you supply any newspapers in the southeast with colored comics?

The WITNESS: We have customers—two in Alabama, 54 one in Mississippi, two in Georgia, two in South Carolina, three in Florida—I have forgotten now, I think it's about six or seven in Carolina, North Carolina, and two in Virginia. Twenty four in all.

The COURT: Do you get your newspaper print in Canada?

The WITNESS: It comes in from Canada.

The COURT: Is that advantageous to you rather than buying southern newsprint?

The WITNESS: Well, we have made test runs with Coosa River paper, Coosa River was financed by newspaper some years ago and we were able, under our stock ownership, to buy five carloads of paper a year. That wasn't sufficient for our needs. We have an exclusive contract with a Canadian mill now. We gave up the Coosa River contract allotment. We are bound by our contract to buy entirely from Canada.

55 The COURT: What newspaper financed Coosa River?

The WITNESS: There was a pool of newspapers. They

bought stock in the firm, set the plant up. The southern newspaper publisher's association led the campaign to finance the plant and erect it. The newspapers bought stock in it. We were one of those who bought. The newspapers all throughout the south bought stock in it. They were given an allotment of newsprint on the basis of their stock ownership.

556 The COURT: Well, if you weren't a member of that, do I gather from what you say that if you are not a member of that association, you can't buy any print?

The WITNESS: No, no. At that time newsprint was scarce and it was on an allotment basis, but Coosa River has shipped us newsprint within the last six months to try out in our comic plant to see how it would produce on comic sections.

The COURT: What do they hold out to you as to the availability of their newsprint now?

The WITNESS: They would like to have us as a customer they say.

The COURT: Do you mean you could get all you want?

The WITNESS: Our contracts with the Canadian mills—

The COURT: I don't mean that. I say could you get, do you understand, all you want from Coosa River now if you
557 didn't have this Canadian contract?

The WITNESS: I think so. Our consumption, Judge, is about two thousand tons a year and I think they would handle that all right. Newsprint now is more plentiful and our contracts on the newspaper and the color part are separate, and there has been some changes as in ownership in the mills now. We are receiving newsprint salesmen who are anxious to sell us newsprint. We are making test runs on three different kinds of other newsprint to see how they print.

The COURT: I think that answers the question.

By Mr. MOORE:

Q. Well, the fact is that now newsprint is really no problem. You can get all the newsprint?

A. That's right. That is what I understand because they come around and call on you now.

Q. And the way newsprint is sold, when you are in a
558 zone you pay the zone price, don't you, no matter where it comes from?

A. Well, I was quoted a price. I won't say quoted, but a newsprint mill in Tacoma, Washington one month ago I visited

the mill. They sell at four dollars under the zone price and the mill manager there said that there is a growing tendency to break down this zone price structure.

Q. That was from Tacoma, Washington?

A. That's right. I was out there and I went down to see this mill.

The COURT: In other words, it is getting more competitive.

The WITNESS: That's right, yes.

By Mr. MOORE:

Q. Well, the zone price you have in your zone I think you said was one hundred thirty-four—

A. Dollars a ton.

Q. And in the zone where Sylacauga is, isn't it \$135.00 or something like that?

A. I think it is. A little further away from the New York port of entry, why, the price goes up. I don't know exactly what it is.

Mr. MOORE: That's all.

550 Mr. CARLSON: No other questions.

The COURT: All right. Step down thank you.

Mr. MOORE: I have one question just let me ask.

By Mr. MOORE:

Q. Now, these contracts you have that you print at Southern, the comic supplement contracts, you know, don't you, that some of those used to be printed at Wilkes-Barre, didn't they?

A. Yes, sir.

Q. By International. What were there, a million or so of them? Weren't there a million fours?

A. I would have to sit down and figure them out and see where they came from, the source.

Q. But a substantial amount of the business you have got used to be printed at Wilkes-Barre?

A. Well, before our plant opened we didn't have any. It was printed somewhere.

Q. At Wilkes-Barre, wasn't it?

A. I don't know. Some might have been printed by Buffalo Color Press.

Q. Well, don't you know that the bulk of it came from International, that it had formerly been printed at International?

560 national?

A. I would offhand say probably it had been, yes.

Mr. MOORE: That is all.

The COURT: I think that is all.

(Witness excused.)

The COURT: Any of these people who come from far stations, I assume when they are excused you don't want them again.

Mr. CARLSON: Beg pardon, sir?

The COURT: Those people who come from remote points, are we through with them now?

Mr. CARLSON: Yes.

The COURT: I think I should instruct the witnesses here who have come from a distance if they want to leave, they are now free to leave. It is up to them.

Mr. CARLSON: Those that have been excused, that have been on the stand?

The COURT: That's right.

Mr. CARLSON: Yes, sir. Mr. Brader.

561 ROBERT BRADER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. CARLSON:

Q. For the record, would you state your name and address sir?

A. Robert Brader, 47 Kado, Wilkes-Barre, Pennsylvania.

Q. By whom are you employed Mr. Brader?

A. International Color Printing Company.

Q. How long have you been employed by that company?

A. Twenty-two years.

The COURT: Don't subdue your voice, just talk naturally. Go ahead.

By Mr. CARLSON:

Q. What has your position been with the International Color Printing Company?

A. I have been employed in the Mailing Department.

Q. Is that over the entire period of the employment?

A. Yes.

Q. Are you a member of any union?

A. Yes.

Q. What union is that, Mr. Brader?

A. Well, presently it is the International Mailers' Union.

562

Q. You say "presently". Is there some change that has occurred?

A. Well, previous to that in 1957 and back to 1941 I was a member of the Wilkes-Barre Paper Handlers Union, which was affiliated with the International Printing Pressmen and Assistants Union.

Q. Is this in effect the same union but one succeeding to the other?

A. That's right.

Q. What positions have you held in the union?

A. Well, I have been chairman and president, chairman and president of the union for fifteen years.

Q. As chairman of the union do you take part in labor contract negotiating sessions with management?

A. I do.

Q. That is, with management of the International Color Printing Company?

A. With the management of International Color.

Q. Would you state who they are and who they have been over the past fifteen years of your experience, the persons on management?

A. Well, there was Mr. Gorman, Booth, Garvey, Brennan, and Mr. Gallagher who is now deceased, and I think one time Mr. Clinton.

Q. Who was the spokesman during this time on the management side?

A. Mr. Gorman.

Q. Do you regard him as the leading voice of management in these negotiations?

A. I do, yes.

Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what subjects were considered at labor union negotiations that you attended in your position as chairman of the labor negotiating committee?

A. Well, when we negotiated contracts it was always fair wages and conditions, and in the period of discussion to negotiate the contracts Mr. Gorman always brought out the problem of our higher manning compared to other plants.

Q. Did he name the other plants in this period of time, this 1948 to 1954 period?

A. Yes.

Q. In the course of negotiations?

A. He named—there was Wilmington, Buffalo, Dunkirk,

Waterbury, Bridgeport and other color printing companies.

Q. About how many of these negotiation sessions did you attend, directing your attention just to 1948 to 1954, if 564 you can give an approximation?

A. Well, I would say at least—the least number would be two a year each contract year and I think during that period we probably had about five contracts. So, I would say in the neighborhood of at least fifteen meetings. I would say the minimum would be about fifteen meetings during that period.

Q. You have described to the Court what companies were mentioned in connection with Mr. Gorman's statement?

A. Yes.

Q. Statements concerning competition, competitors in the industry? You have identified them by name. Did Mr. Gorman in the course of these fifteen or so meetings characterize any of these particularly?

A. Yes, specifically I would say Dunkirk.

Q. What do you mean by "Dunkirk"?

A. Well, that is Buffalo, Greater Buffalo.

Q. Greater Buffalo Press?

A. That is the Dunkirk plant where they didn't employ mailers on the night shift. The pressmen would pile their bundles after the press was registered, then they would fly their bundles and on the two night shifts—well, I assume that they did it on the three shifts, but the mailers would only come in on the day shift and wrap them all up which is very 565 different than we have in Wilkes-Barre.

Q. How did Mr. Gorman refer to Greater Buffalo at these meetings?

A. Well, it was always the competitive problem there and he always knew that we had the higher manning, but it was a problem. He always said it was a mistake of birth.

Q. Did he use any specific term to describe the company Greater Buffalo?

A. Well, I know on several occasions he said "Maybe you would like to work for Buffalo" or something like that.

The Court: I didn't get that last phrase. He always described it as what?

(Whereupon a question and answer were read by the reporter as follows: "Q. How did Mr. Gorman refer to Greater Buffalo at these meetings? A. Well, it was always the com-

petitive problem there and he always knew that we had the higher manning, but it was a problem. He always said it was a mistake of birth.")

The WITNESS: What I am trying to say is the company is concerned with—what he was trying to say is that the company was a mistake of birth being located in Wilkes-Barre. That was one of his favorite expressions.

The COURT: "Mistake of birth", what do you mean? I know one word to describe a mistake of birth. Is that what you had in mind? What do you mean by the phrase "A mistake in birth"?

The WITNESS: That the company where it originated, where Wilkes-Barre became the International Color Printing Company. He said that its origin, that perhaps it would have been better if it was located some place else.

The COURT: All right.

By Mr. CARLSON:

Q. Did Mr. Gorman describe Greater Buffalo as his chief competitor in the course of these discussions?

A. Yes.

Q. Can you identify to the Court any specific occasions on which he so indicated in the period 1948 to 1954? Take the first occasion that comes to your mind.

A. Well, I remember the first time that I was elected chairman of the union, that was back in 1947. I think 1948 was my first negotiating committee. It seems to stick in my mind because that was the first time that I was on the negotiating committee and I recall then that from that period, that during that period of negotiations that he mentioned those specific companies and particularly Buffalo, Greater Buffalo. Then again in 1950 we negotiated a contract and again it was the problem of competition. In fact, I have a letter to the effect, although no names were mentioned in the letter. I know that he mentioned particular companies during negotiations that were his competitors.

Q. Did you discuss in the negotiations who the competitors were?

A. Yes.

Q. One of these competitors was Greater Buffalo Press?

A. Yes.

Q. Moving a little closer down to date, in the negotiating sessions that just preceded the event of Greater Buffalo's ac-

quisition of International, did any such discussion occur with Mr. Gorman?

A. Yes. I think it was our last contract before Buffalo had bought International Color in 1954.

Q. What did Mr. Gorman say at that meeting, or at those meetings?

A. I don't know. Again, like I say, specifically, Buffalo was our competitor.

Q. By "Buffalo", you mean Greater Buffalo?

A. Greater Buffalo.

Q. You knew what he referred to when he said "Buffalo"?

A. Yes, Dunkirk.

Mr. CARLSON: That is all.

CROSS EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman still refers to Greater Buffalo in the negotiations as the competitor, doesn't he?

A. No.

569 Q. You mean to say you have never heard that reference since 1955?

A. I know that since 1955 when I negotiated contracts that every contract since then, when we negotiated contracts he said that he wasn't the boss any more, that he had to go back to the boss.

Q. But didn't he always in the negotiations, didn't he right down to date argue that Greater Buffalo didn't have this high manning expense?

A. He still referred to manning.

Q. And he points out that Greater Buffalo was having less expense manning than he is?

A. That is true, yes.

Q. And he points out that his prices have to be competitive with Greater Buffalo and therefore you fellows should go along with him on manning?

A. Well, yes, he talks about manning. They always talk about manning.

Mr. MOORE: I think that is all.

The COURT: Let me ask you, what is it that you have in Wilkes Barre—is that where you are stationed?

The WITNESS: Yes.

The COURT: In the way of manning, what is it that you have in Wilkes Barre in the way of manning that Buffalo and Dunkirk doesn't have?

The WITNESS: Well, see, where we have our contracts, you take the bundles after you tie the bundle, we have a man at each press, and he takes it or stacks it, whichever the case may be, where at Buffalo they don't do it. The pressmen's union, they flick them or stack them on a tray or skid and take them into a mail room and then during the day the mailers come in and wrap these bundles up.

The COURT: What is that, mailers?

The WITNESS: Mailers, or wrappers. I think Mr. Henry used the term bundling.

The COURT: In other words, in Buffalo and Dunkirk the pressmen take the bundles —

The WITNESS: I don't know about the bundles.

The COURT: Well, they take the finished product out to the mail room?

The WITNESS: Yes.

The COURT: Whereas in Wilkes Barre there is a special man that does that?

The WITNESS: That's right.

REDIRECT EXAMINATION

By Mr. CARLSON:

Q. Just one question. During your cross examination you indicated that following the 1954 acquisition that Mr. Gorman stated he had to go back to the boss?

A. Yes.

Q. What did Mr. Gorman mean by that, if you know?

Mr. MOORE: Wait a minute. I object to what he meant by that.

Q. Did Mr. Gorman state to you —

The COURT: Well, certainly it would be an objectionable question what he meant by that, unless he told you what he meant.

By Mr. CARLSON:

Q. Did Mr. Gorman state to you who he referred to?

A. We knew that Buffalo had bought —

Mr. MOORE: I am going to object to that and move to strike it out.

The COURT: Leave it just the way it is. He said he was no longer the boss. Is there anything else?

572 Mr. CARLSON: Nothing further.

The COURT: Well, I mean, we all know and acknowledge that Greater Buffalo has acquired the stock of International. All right, next witness.

Mr. CARLSON: I will call Mr. Fisher.

DANIEL FISHER, called as a witness by the plaintiff, and being first duly sworn, testified as follows:

By the CRIER:

Q. What is your name?

A. Daniel Fisher.

DIRECT EXAMINATION

By Mr. CARLSON:

Q. Please state your name and address for the record, Mr. Fisher?

A. Daniel Fisher, 175 Mill Street, Parsons.

Q. Parsons?

A. Wilkes-Barre.

Q. By whom are you employed?

573 A. International Color Printing Company in Wilkes-Barre.

Q. And how long have you been employed by them?

A. For ten years, approximately.

Q. What is the nature of your employment; what are your duties as far as your job is concerned?

A. A machinist.

Q. You are a machinist?

A. Yes.

Q. Are you in a particular category of machinist?

A. Maintenance machinist.

Q. Maintenance machinist?

A. Yes.

Q. In the course of your duties as a maintenance machinist for International, do you work on machinery in the printing part of the plant?

A. I do.

Q. Have you ever in your experience worked on a press called press number 2022?

A. I have.

Q. Would you describe to the Court the physical condition, by that I mean the place at which press 2022 was located, and the way it was put up in the Wilkes-Barre plant?

574 A. Well, it was located in the building next to the machine shop which was a brick building with a concrete floor and the press was erected, was on pipes, about six inch pipes for uprights.

Q. Is that where work was done on it by you as a machinist?

A. Yes.

Q. Did you and the machinists work on this over a period of years in the course of your duties?

A. I did.

Q. Did it occupy a substantial portion of your work time, working on press 2022 and I mean by that, from time to time, or regularly you would be working on that press?

A. Oh, from time to time I would work on it.

Q. Did you, in working on it, gain a general familiarity with the press?

A. I did.

Q. I am going to refer to an item on the record on page 13 of an affidavit submitted in this matter by Mr. Gorman and to save a little time here I will read the statement that appears on that page, "When the work on the press, referring to press 2022, was substantially completed at Wilkes-Barre, a collapse of the floor of the warehouse resulted in throwing the press out of line and that necessitated redoing a substantial amount of work on the press, and this work was carried out after it had been shipped to Sylacauga in early 1960". Referring generally to that statement I have just read, do you have any knowledge of such an incident?

A. Well, I do recall that there was a crack appeared in the floor, in the concrete floor, at which time we inserted an H-beam, and a couple of house jacks, which we borrowed. When I say "we", I mean the gang. I myself didn't do that certain job, but I don't think it resulted in any major breakdown in the press.

Q. Did you observe the sag? Is that how you describe it, the sag?

A. Yes.

576 Q. How much sagging was there?

A. In my estimate it wasn't much.

Q. Did you, after this incident, further work on 2022 as a machinist?

A. Yes.

Q. Did you have an opportunity to observe the condition of the press?

A. I did.

Q. Did you observe, in working on press 2022, any damage to the machinery that could be attributed to this incident?

A. No.

Q. In the course of your duties as machinist at Wilkes-Barre, do you have opportunity to observe what machine tools and what machinery come in and go out of the plant?

A. I do.

Q. Was any machinery returned to Wilkes-Barre recently?

Mr. MOORE: If Your Honor please, I object to that. How can this witness testify, was he there twenty-four hours a day, is he going to say nothing came in the plant without him seeing it?

The COURT: I will let him testify as to what he did see.

577 Mr. MOORE: If he wants to testify under oath that nothing came into the plant——

The COURT: I am going to let him testify to what he did see.

By Mr. CARLSON:

Q. Did you observe within the last two weeks any machinery coming into the Wilkes-Barre plant?

A. There was a shipment of machine shop equipment that came back from Sylacauga.

Q. What was the date, sir?

A. Well, it was around the seventeenth or eighteenth of the month.

Q. What month?

A. October.

Q. Of 1961?

A. Yes.

Q. Less than two weeks ago, is that correct?

A. That is correct.

Mr. CARLSON: No further questions.

The COURT: There has been testimony that they shipped some tools down there to do their work, set up the installation.

Is that the type of tools you are talking about?

578 The WITNESS: The very same come back.

The COURT: They were taken down there for the purpose of getting the Sylacauga plant in shape to operate?

The WITNESS: I presume that is it.

The COURT: Any questions, Mr. Moore?

CROSS EXAMINATION

By Mr. MOORE:

Q. You said there was a little sag in the floor underneath this press?

A. Yes.

Q. And necessitated putting in an eye beam and jack?

A. Yes.

Q. What was the tolerance of this press?

A. The tolerance of the press in the warehouse when it was being erected?

Q. What is the tolerance of press 2022 when it's ready for operation?

A. I would say they wanted it perfect.

Q. Three one-thousandths of an inch, isn't it?

A. Yes.

Q. If you are going to run a press at a rate of 25,000 an hour you have got to have perfect alignment on it, don't you?

A. It wasn't to run in the warehouse.

579 Q. Well, isn't it a fact that press 2022 was never aligned at Wilkes-Barre?

A. That is a fact.

Mr. MOORE: That is all.

The COURT: That is all, you may step down.

(Witness excused.)

Mr. CARLSON: Mr. Williams, take the stand, please.

WILLIAM J. WILLIAMS, called as a witness in behalf of the plaintiff, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. CARLSON:

Q. State your name and address?

A. William J. Williams, 226 Mill Street, Wilkes-Barre.

Q. By whom are you employed?

A. International Color Printing Company.

Q. I think you should raise your voice.

A. International Color Printing Company.

Q. Maybe if you moved a little closer to the microphone it would be helpful. How long have you been employed by International Color Printing Company?

A. Eight years and eight months.

580 Q. Since about——

A. February, 1953.

Q. What is the nature of your duties with International?

A. Machinist.

Q. In the course of your duties as a machinist at International have you become acquainted with press 2022?

A. Yes, sir.

Q. Did you work on it while it was in Wilkes-Barre?

A. Yes.

Q. Referring to the Gorman affidavit, I will shorten this up, were you acquainted with any incident with regard to the floor of the plant? In which press 2022 was set up?

A. Yes.

Q. At Wilkes-Barre?

A. Yes.

Q. Did you, after this incident occurred, work on the machine?

A. Yes.

Q. At Wilkes-Barre?

A. Yes.

Q. Did you observe any damage to that machine?

A. No.

Q. Attributable to the incident regarding this sagging
581 of the floor?

A. No.

Q. Did you work on that machine after it went to Sylacauga?

A. Yes.

Q. Could you give the Court an idea as to whether the major part of your time working at Sylacauga was spent working on press 2022?

A. Yes.

Q. More than half?

A. Yes.

Q. How long were you in Sylacauga?

A. One day shy of a year.

Q. From what date initially?

A. From the 25th of May, 1960 to the 24th of May, 1961.

Q. From your familiarity, working on press 2022 during this time, did you observe any damage to the press that could be attributable to the incident of the floor at Wilkes-Barre?

A. No.

Mr. CARLSON: I have no further questions.

CROSS EXAMINATION

By Mr. MOORE:

Q. You volunteered to go to Sylacauga, didn't you?

A. Yes, sir.

Q. And you went there because it was a pretty good

deal?

A. Yes.

Q. You got \$14.00 a day living expenses?

A. Twelve.

Q. You got an erector's rate?

A. Yes.

Q. That was \$3.50 an hour, a better rate than you usually

get?

A. Yes.

Q. You had a sixth day at time and a half?

A. Yes, sir.

Q. And the \$12.00 a day living expenses. Now, you knew, did you not that Greater Buffalo was reimbursing International Color for the salaries and expenses you had down there?

A. I didn't know, no.

Q. Didn't Joe Clinton tell you that?

A. Not that I know of, that I recall.

Q. Didn't they tell you that when he asked you if you wanted to go down?

A. They told us the rate of pay, what we would get, that was it.

Q. Did you ever hear that anyplace?

A. Not that I remember.

Q. You never heard anybody speaking about it?

A. No, sir.

Q. Now, the press had to be aligned in Sylacauga, didn't it?

A. Yes.

Q. And wasn't the alignment knocked out when the floor collapsed up at Wilkes-Barre?

A. It was never aligned at Wilkes-Barre as it was in Sylacauga?

Q. The drives were out of alignment when the press got down to Sylacauga?

A. Everything was out, we had to align it all from scratch.

Q. Part of the realignment was required because of this collapse of the floor, wasn't it?

A. I can't truthfully say that.

Q. Do you know whether it was or it wasn't?

A. I don't know.

Q. You don't know whether the collapse of the floor had anything to do with the alignment of the press?

A. Will you repeat that?

Mr. MOORE: Will you read it to him?

(Thereupon last question was read by reporter.)

584 A. No.

Mr. MOORE: That is all.

Mr. CARLSON: I would like to clear one matter up. The witness maybe was not referring to the same thing that Mr. Moore was.

By Mr. CARLSON:

Q. How did the parts of this press, or how did the press come to be in Sylacauga, in what physical form did it come there?

A. It was taken apart and shipped on skids.

Q. So that it didn't come down as a whole machine?

A. No.

Q. Did that mean that you, as a machinist, would understand that it had to be realigned after it got there?

A. Definitely.

Mr. CARLSON: I have no further questions.

Mr. MOORE: No questions.

(Witness excused.)

585 Mr. CARLSON: Your Honor, I think the Government will not put on anymore witnesses at this time. I did indicate to counsel when I called him to advise him who would be on as far as the Government was concerned, that I have been in contact with Mr. Harold Tyler, counsel for Atlantic Features and for Southern Color Print, and that he had requested of me that on this matter he be permitted to make a statement to the Court. The Department has considered its position on this and as long as the statement to the Court is limited to the issues on the motion and the motion itself, the Department would have no objection to Your Honor hearing it, it would, in fact, recommend you do hear it in the same manner that you took in consideration under the motion the representation of the people of Sylacauga and of certain others.

The COURT: Who is this individual that you are speaking of?

Mr. CARLSON: Mr. Harold Tyler.

586 The COURT: What organization?

Mr. CARLSON: He is counsel for Southern Color Print

and counsel for Atlantic Features, both of whom have been the subject of a considerable amount of testimony. Your Honor will recall that Mr. Smith, who was on the stand, is head man at Southern Color Print.

The COURT: Does he want to testify?

Mr. CARLSON: No, he wants to make a statement to the Court.

The COURT: Is he the counsel for them?

Mr. CARLSON: Yes. You will recall as this developed, the motion developed, there were statements by the Government with regard to irreparable injury to persons in the southeast. There was evidence in affidavit form, and so forth, admitted on that point.

The COURT: An affidavit from this corporation that he wants to speak about?

Mr. CARLSON: From Mr. Smith, who was head of Southern, from Mr. Hornaday, head of Atlantic Features.

The COURT: This is the counsel for them?

587 Mr. CARLSON: Yes.

Mr. MOORE: I have great respect and friendship for Brother Tyler, but after all it seems to me we have enough problems in this litigation with the parties that are already in it that we should not be entertaining the views of strangers to the litigation. I see nothing that would help Your Honor in the resolution of the problem now before you or the problems that have yet to come before you that could be aided by a statement, argument, or whatever it is, by a lawyer or someone not a party to the litigation who may feel himself aggrieved in some way. I would suggest that if we open the door this way, we could certainly entertain a tremendous amount of counsel and spend a great deal of time doing it. I would earnestly urge upon Your Honor that Mr. Tyler, while I have the greatest respect for him, has no standing to be heard in the litigation.

588 The COURT: Where is Mr. Tyler from?

Mr. CARLSON: New York City. May I express myself, Your Honor, a little further on this point? Mr. Moore has made some statements on the record concerning what the issues are in this matter with regard to the issues of irreparable damage in Sylacauga. The Government is of the view that Mr. Tyler would enlighten Your Honor for whatever it is worth on this subject.

The COURT: "Enlighten" you mean within the confines of the evidence that you say is before me by affidavit?

Mr. CARLSON: Yes, by affidavit, by deposition, by the other forms, the entire record, yes.

The COURT: I assume Mr. Tyler is being paid for his trip.

I don't want him not to earn his salt. You may proceed.

589 Mr. MOORE: I will introduce your Honor to Mr. Tyler.

Mr. TYLER: Thank you, Mr. Moore.

Your Honor, I will be very very brief. There are really two reasons why we would like to bring to the Court's attention which is clearly of course a matter of our view only, argument only. This is certainly nothing more than that. But there are two points we would like to make and the reason why we want to make them is because we have a position somewhat different from the Government here.

As I understand the record, the Government has proposed in effect two alternative forms of order for consideration for the Court in this proceeding; one which allows the Sylacauga plant to open for the sole purpose of printing approximately three million four hundred thousand runs of four from Greater
590 Buffalo's Dunkirk plant. The other is what I would consider the more normal form of blanket, or shall we say harsher form of order, continuing in effect the now status quo.

Mr. MOORE: I don't want to interrupt, Mr. Tyler, but I think that since he has been informed of the record that position has changed. I think it was very clear we are today dealing only with that one order.

The COURT: I think he apparently has in mind the progress of the case.

Mr. TYLER: Yes. As I understand it, and I have seen the letter, the Government, although it has expressed its preference, has sent to the Court two alternative forms of order. I also understand, of course that counsel for Buffalo and other defendants perhaps have other views on those orders
591 which are a little different than the Government's.

The COURT: Well, let's put it this way: I have received two alternative orders. Now, just what the status of them is now, I don't think is of consequence. You go ahead.

Mr. TYLER: I want to make it clear to the Court that we are advocating from the point of view of being the only competitors in the southeast territory, and as a matter of fact the only competitor in the business east of the California-Nevada line of these defendants, with the two minor exceptions of Eastern,

which is a co-conspirator, but not a defendant in this case, and Star Color Press in Wilmington. So, you can see our selfish position.

We do wish to urge your Honor that insofar as Subdivision 5 of the ad dominum clause of the complaint filed by the Government in this case asks for divestiture of the Sylacauga plant from Greater Buffalo, that it may be in practical effect that notwithstanding the limitations of this proceeding from a procedural point of view, in practical effect we may have a resolution very shortly as a result of these proceedings now before your Honor of that very important part of the Government's ad dominum clause, and that is why we wish to just merely make our position known.

In that respect, we have two points. As your Honor knows, there has been considerable evidence and argument suggesting that one of the reasons for the position of the defendant, particularly the defendant, Greater Buffalo, today in this industry is that they have, if I may use the phrase, produced a better mouse trap. That may well be, but we are concerned because this case involves charges of monopolistic conduct in a conspiracy under Sections 1 and 2 of the Sherman Act.

Now, those particular charges necessarily by the proof in this record, involve our client very drastically and, therefore, it is our concern because today really I submit this portion of the ad dominum clause divestiture of Sylacauga, may be as a practical matter resolved. I can't conceive that anybody is going to open Sylacauga and then be told not to open it.

Now, we want this Court, notwithstanding the limits upon the evidence, which I understand is before your Honor today and yesterday, to also consider some other evidence which is a matter of record, which goes to the monopolistic charges against these defendants because they concern us. They concern not only us for selfish reasons as a competitor of these people, but we say it concerns the general public which we are part of, because we are part of the market into which these people want to move this new plant. I ask, for example, the Court keep well in mind Exhibit 22 in the original Government affidavit, where Mr. Hirscheiser, a sales manager, is told by Mr. Koessler, "Let's start making it difficult for Newport." We are concerned about that. We are concerned also about such statements where we have a letter here in the record—

Mr. MOORE: If your Honor please, I don't want to seem rude, but I thought he was going to state a position and not argue evidence here.

Mr. TYLER: I concede it, Mr. Moore, and I concede again that my position necessarily is argument. It is not sworn testimony, there is no doubt of that.

The COURT: He is pointing up certain pieces of evidence, Mr. Moore, that he would like me to pay heed to.

Mr. TYLER: Precisely

The COURT: I don't think there is any harm in that.

Mr. MOORE: The only thing is it will invariably provoke a reply on our part and make these proceedings lengthy.

596 Mr. TYLER: Let me say this; I agree, and I do not, and I should not particularly make my remarks long, but I say that the Court understandably and necessarily is in a position where it is hearing a lot of evidence about what benefits will accrue to the community of Wilkes-Barre and Sylacauga and what disability will accrue to these communities in this question which is a serious one. You also remember, and this is my sole point, that this problem necessarily, your Honor, must be considered in the context of the charges of the violations, substantive and conspiratorily of the Sherman Act. Now, secondly, your Honor, in view of the testimony here and what I think is the concession by the defendants as well as the Government that there have been plans afoot for a great number of years by Greater Buffalo, International and perhaps
597 others to open this plant in Sylacauga and because of the serious consequences economically, socially and otherwise, not only to the Government, the public, my clients, but also to these defendants, that in the interests of orderly procedure, since so much time has gone on already, that we would advocate to this Court that no serious damage, and indeed, maybe benefit would be achieved by going ahead on an early trial on the merits, rather than, in effect, now determining a part of the Government's request for final release.

598 The COURT: When do you propose that trial takes place?

Mr. TYLER: I recognize, Your Honor, that you here in the Western District of New York have a calendar problem, as I am told by others, but I would guess the early part or the earliest would be six months. This is a guess.

The COURT: That is being optimistic.

Mr. TYLER: It may well be. I know something of the problems of this Court.

The COURT: Go on with your next point.

Mr. TYLER: I do think that in view of the time, not only since the commencement of this action but because of the serious consequences and because certain things may not have come to the attention of the Court, it may be orderly procedure that it might be better if we wait six or eight months. I bring one more thing to your attention——

The COURT: You heard the evidence that they are
599 losing \$20,000 a month, didn't you?

Mr. TYLER: I heard that and I also heard the evidence that in recent years Greater Buffalo, in particular, has gone into the commercial printing as opposed to color comic supplement printing. I wonder if, for example, with problems of this kind which are now before the Court, if it might be of some interest and perhaps some important bearing might come out after full and further hearings on the complete merits, as to whether maybe commercial printing couldn't be done in Sylacauga as opposed to Wilkes-Barre and that in that way be of advantage to Greater Buffalo and that the plant might be not only salvaged but put to work profitably on that basis.

The COURT: What is your next point?

Mr. TYLER: I am coming to the end. These are my
600 only two points, one substantive and one procedural.

The COURT: I will invite you, if you wish, to write me a letter enlarging on what you said today providing you send all parties copies. You have permission to add to it. Do you want to say anything, Mr. Moore?

Mr. MOORE: No. I will restrain myself, Your Honor. I may have something to say about the letter.

Mr. CARLSON: Procedurally, how does Your Honor wish to proceed from here?

The COURT: I consider the evidence closed, the case submitted. Do you want to give me any additional briefs?

Mr. MOORE: I will submit a brief.

The COURT: You may submit a brief summarizing everything and making legal points if you wish. Do you feel the same way, Mr. Carlson?

Mr. CARLSON: I am not quite sure whether this will help Your Honor or hinder.

The COURT: I will let you figure that out.

601 Mr. CARLSON: Will Your Honor set a time?

The COURT: That is what I wanted to ask you next.

Mr. MOORE: I think I need about ten days, Your Honor.

The COURT: Suppose you exchange briefs in ten days with three days for reply and exchange.

Mr. CARLSON: May I ask one further question in this matter and that is when the time comes if the Court is going to issue its order, I would request on the part of the Government that it be on notice, if I may.

The COURT: All right.

(Thereupon at 3:30 p.m. o'clock the proceedings were adjourned.)

(Caption Omitted in Printing)

602 FINDINGS OF FACT AND CONCLUSIONS OF LAW

MOTION FOR PRELIMINARY INJUNCTION

The complaint charges, in part, that the defendants, Greater Buffalo Press, Incorporated (herein called Greater Buffalo), the King Features Syndicate Division of The Hearst Corporation (herein called King), Newspaper Enterprise Association Inc. (herein called NEA) and The International Color Printing Company (herein called International) have committed violations of sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and of section 7 of the Clayton Act (15 U.S.C. § 18). The complaint prays, among other things, that Greater Buffalo be required to divest itself of ownership of International and ownership control of and participation in the plant operated by Dixie Color Printing Corporation (herein called Dixie) at Sylacauga, Alabama, and a plant operated by Southwest Color Printing Corporation (herein called Southwest) in Lufkin, Texas. These latter two corporations are parties defendant to this action for the purposes of relief only.

The plaintiff has instituted by an order to show cause a motion for a preliminary injunction enjoining Greater Buffalo, International, Dixie and Southwest from:

(a) Consolidating or intermingling the business operations, assets or personnel of International with those of Greater Buffalo, Southwest or Dixie or any other person;

(b) Conveying, selling, leasing or transferring in any manner newspaper customers or runs, printing presses, machines, equipment and parts thereof, and any other assets or any stock of International to any other person;

(c) Printing color comic supplements at the Sylacauga plant of Dixie with printing presses, machinery, equipment and parts thereof obtained from or shipped by International or printing color comic supplements at such plant with personnel of International or printing color comic supplements at such plant with personnel of International or printing color comic supplements at such plant for customers supplied with such supplements by International at any time since June 1, 1955.

This motion is predicated on the claim upon the part of the plaintiff that a preliminary injunction is necessary to prevent Greater Buffalo, International, Southwest and Dixie from making any disposition of the business or assets of International which would frustrate the court in the exercise of its power upon a final determination of the action to effect divestiture as prayed for in the complaint. No relief is sought against

King and NEA in the order to show cause which brought 604 on the motion for a preliminary injunction, although they have been heard on the motion, together with the *amici curiae* indicated above.

The court deems it unnecessary to rule on allegations of violation of the Sherman Act in view of the concession by defendant Greater Buffalo (and the finding of this court) that the test for the granting of a preliminary injunction is satisfied under the Clayton Act allegations of the complaint. This test is set forth in *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953). Defendant's concession that a preliminary injunction should issue is stated directly in its brief submitted after the final hearing on the application, at page 4, as follows:

"The defendant parties to this motion have controverted only so much of plaintiff's evidence as bears on this motion. They concede that there are difficult and substantial questions which would justify the Court, as a matter of law, in entering a temporary injunction to preserve the competitive *status quo*."

On the entire record herein, the court enters the following findings of fact and conclusions of law, for purposes of this motion only.

Findings of Fact

1. The printing and sale of color comic newspaper supplements (herein referred to as comic supplements), which consist of newsprint printed with colored inks containing reproductions of copyrighted color comic features, are found to be the subject of interstate commerce within the meaning of section 7 of the Clayton Act (15 U.S.C. § 18). The 605 defendants are "engaged in commerce" within the meaning of section 7 of the Clayton Act (15 U.S.C. § 18).

2. The significant companies now competing in the business of printing comic supplements for sale to newspapers are: (a) defendant Greater Buffalo, Buffalo, New York, (b) defendant International, Wilkes-Barre, Pennsylvania, (c) Eastern Color Printing Company, Waterbury, Connecticut, (d) Southern Colorprint Corporation, Newport News, Virginia and (e) Acme Colorprinting Corporation, San Bernardino, California.

3. The significant companies now competing in the sale of comic supplement printing to newspapers are: (a) defendant Greater Buffalo, (b) defendant King, (c) defendant NEA, (d) Eastern Color Printing Company, (e) Acme Colorprinting Corporation and (f) Atlantic Features and Printing, Inc., Newport News, Virginia, the exclusive sales agent for Southern Colorprint Corporation.

4. In 1955, the market for the printing of comic supplements for sale to newspapers, measured in terms of 4-page standardized sections, was divided approximately as follows: (a) defendant Greater Buffalo 42%, (b) defendant International 40%, (c) Eastern Color Printing Company 5%, (d) Southern Colorprint Corporation 1%, (e) Acme Colorprinting Corporation 7% and (f) Buffalo Colorpress, Inc., Buffalo, New York [acquired by Greater Buffalo in 1955] 5%.

5. In June 1955, defendant Greater Buffalo acquired 606 all of the stock of the defendant International.

6. Defendant Greater Buffalo contends that the relevant market for purposes of measuring the effect of this acquisition includes not merely the market of color comic supplements printed by independent printing concerns but also all color comic supplements distributed by newspapers in the United States, including those produced by the consuming newspapers themselves. Defendant further contends that the said acquisition did not substantially lessen competition or tend to create a monopoly in the color comic supplement indus-

try within the meaning of the Clayton Act, but concedes as indicated above, and the court finds, that, sufficiently serious, substantial and difficult questions have been raised to justify the court's granting a temporary injunction.

7. Since the date of the acquisition of International in 1955, defendant Greater Buffalo has exercised control over International and consumed and intermingled assets of International by the use of equipment, manpower and funds advanced by International and used by Greater Buffalo in the acquisition of land, construction of building and plant facilities, and general preparation of a printing plant at Sylacauga, Alabama, now owned by defendant Dixie. One key former employee of International is presently employed by Dixie in a general supervisory capacity and has been employed at the Sylacauga plant during much or all of the preparation of the plant at Sylacauga. Other employees of International have now been returned to International.

8. There is further evidence that Greater Buffalo has controlled the placement of various printing runs belonging to International and has taken some of them for production at its own facilities.

9. Further consumption and intermingling of assets of International by Greater Buffalo, as above set forth, pending the completion of this action, or by any other defendant hereto, other than by International itself for the ordinary use of its business, will tend to frustrate any attempt of this court to restore International to an independent competitive business, able to operate effectively, efficiently and profitably as it presently exists, and would, thereby, threaten immediate irreparable injury to International.

10. The plant at Sylacauga is ready to commence business, but is closed under a restraining order issued by this court and maintained in force until final decision of this application by consent of the parties. The opening of the said plant, without controls imposed by this court, will threaten immediate irreparable injury to the economic existence of the defendant International in the event this court later determines that the prayer for divestment of International from Greater Buffalo should be granted, inasmuch as International will not be able to freely compete for business in the southern states as long as it remains a wholly owned subsidiary of defendant Greater Buffalo.

11. The opening of the Dixie plant would threaten immediate irreparable injury to Greater Buffalo's sole remaining comic supplement printing competitor in the southeast, Southern Colorprint Corporation and hence threatens irreparable damage to the public interest in competition, by reason of enhancement of defendant Greater Buffalo's apparent monopoly position during the pendency of this action.

12. There is general economic distress in both the areas of Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama.

13. The public interest requires that the plant at Sylacauga, Alabama, be permitted to operate, but under controls which will enable International to retain its independent ability to operate effectively, efficiently and profitably, as it presently exists, in the event this court ultimately includes a provision for total or partial divestment of Greater Buffalo's interest in International in the final decree herein.

14. The public interest further requires that Dixie Color Printing Corporation be protected by order of this court against possible restrictions imposed by defendant Greater Buffalo upon or representations made to customers dealing with Dixie which might have the effect of diverting business from Dixie in the event the final decree herein includes a provision
609 for total or partial divestment of Greater Buffalo's interest in Dixie.

CONCLUSIONS OF LAW

1. This court has jurisdiction to enter a temporary injunction herein pursuant to section 15 of the Clayton Act (15 U.S.C. § 25).

2. The plaintiff has raised serious, substantial and difficult questions going to the merits of the allegations of the complaint with respect to violations of section 7 of the Clayton Act (15 U.S.C. § 18). Due consideration has been given to these questions and the court has concluded that their determination is not necessary for the purposes of this motion and that they should be the subject of more deliberate investigation in a plenary trial of these issues upon the merits.

3. The protection of the public interest in light of the facts indicated above justifies and requires, in the court's opinion, the issuance of a temporary injunction with the terms and conditions contained in the temporary injunction issued and filed

concurrently with the issuance and filing of these findings of fact and conclusions of law.

John O. Henderson
JOHN O. HENDERSON,
United States District Judge.

DATED. June 22, 1962.

[Caption Omitted In Printing]

ORDER

The court, having examined the complaint filed herein on the 6th day of January 1961 (having heard and considered arguments of counsel for the parties on plaintiff's motion for preliminary injunction), and having duly considered the facts set forth in the affidavits, exhibits and testimony submitted in the premises by the parties hereto, it is

Ordered that, pending final disposition of this action, the defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, are hereby enjoined from:

1. Further consolidating or intermingling, except as provided in paragraph 4(f) below, the business operations of the defendant, The International Color Printing Company, or any of its assets or operating personnel, with those of the defendants, Greater Buffalo Press, Incorporated, Southwest Color Printing Corporation or Dixie Color Printing Corporation, or any other person,

2. Conveying, selling, leasing or transferring in any manner any newspaper customers or runs, printing presses, machines, equipment and parts thereof, or any other assets of, or in the possession of, or any stock of, the defendant, The International Color Printing Company, to the said defendants, or any of them, or to any other person;

3. Printing color comic supplements at the plant of the defendant, Dixie Color Printing Corporation, Sylacauga, Alabama, with personnel employed by the defendant, The International Color Printing Company:

(a) since April 3, 1961, or

(b) between June 1, 1955 and April 2, 1961, unless (1) it shall immediately execute a release in favor of any such employee specifically releasing him from any contract commit-

ment to Greater Buffalo Press or any of its subsidiaries only to the extent that he may thereafter accept any offer now or hereafter made by The International Color Printing Company to return to its employ, without prejudice to prorata compensation by Greater Buffalo or its subsidiary at the rates heretofore established until termination of his employment, said release to be effective until the final termination of this litigation if divestiture (total or partial) is not ordered by the final decree of this court, or until one year following the final termination of this litigation if divestiture (total or partial) is ordered; and (2) it shall immediately and continuously thereafter, until the termination of the effectiveness of said release, provide The International Color Printing Company with copies of all employment contracts, and complete information concerning rates of pay and other benefits accorded said employee from time to time; and

612 4. Printing color comic supplements at the plant of the defendant, Dixie Color Printing Corporation, Sylacauga, Alabama, with printing presses, machinery, equipment and parts thereof obtained from, or shipped by, the defendant, The International Color Printing Company, at any time since June 1, 1955, except upon the following terms and conditions:

(a) that within thirty days of the date of entry of this order the plaintiff and the defendant Greater Buffalo Press each file with this court a list of three appraisers recommended by them as qualified to conduct the appraisal provided for in subparagraph (b) below and certified by the proponent to be independent of any interest in or of the proponent, and that within fifteen days after such filing is completed, each said party may submit to the court affidavits objecting to the appraisers suggested by the other party and giving information in support of appraisers propounded by it (these affidavits to be kept at all times confidential for use of the court only and not to form part of the filed record in this matter unless hereafter directed by the court to be filed under seal), after which submission, this court will select an appraiser from said recommended lists or independently of said lists;

(b) that after the appointment of an appraiser by this court, he make an appraisal of the current market value
613 of each item of machinery and equipment at said Sylacauga, Alabama, plant (such appraisal to be filed within thirty days of the date of entry of the order appointing the

appraiser), for which purpose said appraiser shall be granted free access to the Sylacauga plant premises, and the expense of such appraisal shall be borne by the defendant Greater Buffalo Press, Incorporated;

(c) that minor machinery, equipment and parts (by which is meant machinery, equipment and parts the value of which does not individually exceed the sum of \$1,000.00 and which will not be necessary for the effective, efficient and profitable operation of The International Color Printing Company, as it presently exists, in the event this court ultimately includes a provision for total or partial divestment of Greater Buffalo's interest in International in the final decree herein) may be conveyed, leased or transferred by The International Color Printing Company to Greater Buffalo Press, Incorporated, or Dixie Color Printing Corporation, for use at the Sylacauga, Alabama, plant provided (1) that an instrument of conveyance, lease or transfer be executed which shall recite the provisions of this order and make such conveyance, lease or transfer subject to the provisions herein contained, (2) that immediately upon the execution of said instrument or of any executory agreement to convey, lease or transfer, notice
614 thereof, with a copy of the said instrument or agreement, be served on the plaintiff by certified mail directed to the United States Department of Justice, Antitrust Division, Washington 25, D.C.; (3) that an affidavit be obtained from an officer of The International Color Printing Company, certifying [a] that the equipment concerned is minor equipment as that term is used in this order, [b] stating the date and source of acquisition of said machinery, equipment and parts, together with the original cost and present value thereof, [c] stating facts affirmatively showing that the transfer of said machinery, equipment or parts will not be inconsistent with the intent of this order, and [d] stating the source of deponent's information, and that said affidavit be served on plaintiff in the manner specified above; (4) that an affidavit be obtained from an officer of Greater Buffalo Press, Incorporated or Dixie Color Printing Corporation affirmatively showing why the conveyance, lease or transfer is necessary for the effective operation of the Sylacauga, Alabama, plant, said affidavit to be similarly served on plaintiff; (5) that the plaintiff shall have fifteen days after the service upon it of the papers above specified in which to examine said equipment (for which purpose it shall be granted free access to the premises of The

International Color Printing Company) and/or to object to the transfer of said machinery, equipment or parts by filing notice of objection (stating why said transfer is alleged to be in violation of this order) with the clerk of this court and serving the same on defendants The International Color Printing Company, Greater Buffalo Press, Incorporated, and Dixie Color Printing Corporation by certified mail directed to their respective places of business; (6) that unless said objections are acceded to by defendants, they shall be submitted to the court for decision without oral argument but with leave to present the parties' respective positions by letter, unless otherwise directed by the court on its own motion or on application of any of the said parties; and (7) that no actual transfer of physical possession of said machinery, equipment or parts shall be made to the Sylacauga plant until expiration of the said fifteen days without objection being made by plaintiff or, in the event that objection is made, until the objection is withdrawn or until further order of this court;

(d) that the defendants, Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation, do not print at such Sylacauga plant at any time prior to the final disposition of this action, any color comic supplement printing runs other than for newspapers whose supplements are now printed by direct contract with Greater Buffalo at its Dunkirk, New York, plant, which newspapers must be located in the states of Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North Carolina; except in accordance with subparagraphs (e) and (f) below:

(e) that the defendants, Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation may, notwithstanding the provisions of the foregoing subparagraph (d), accept printing contracts at Sylacauga, Alabama, for other newspapers than those whose supplements are now printed by direct contract with Greater Buffalo at its Dunkirk plant provided (1) any contract entered into contain an extract copy of this order, including a quotation of this subparagraph and of subparagraph (d) above; (2) that any such contract be expressly made subject to this order; (3) that a copy of the contract be served on plaintiff by mail directed to the Department of Justice, Antitrust Division, Washington 25, D.C., immediately after execution; (4) that the said defendants serve an affidavit on plaintiff in the same manner stating that the newspaper

run concerned has not, since June 1, 1955, been handled by defendants The International Color Printing Company or The Hearst Corporation, or by Southern Colorprint Corporation or its sales agent Atlantic Features & Printing, Inc., or any of their subsidiaries, divisions or other entities connected in business with them; (5) that the plaintiff shall have forty-five days after the service upon it of the papers above specified in which to object to such contract by filing notice of objection with the clerk of this court and serving the same on defendants Greater Buffalo Press, Incorporated, and Dixie Color Printing Corporation by certified mail directed to their respective places of business or to their attorneys of record; (6) that unless said objections are acceded to by defendants, they shall be submitted to the court for decision without oral argument but with leave to present the respective positions by letter, unless otherwise directed by the court on its own motion or on application of any of the said parties; and (7) that in the event this court sustains the objections made, performance of said contract at the Sylacauga, Alabama, plant shall be terminated within thirty days of the filing of the order sustaining the objections;

(f) That the defendants Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation, at any time after the Sylacauga plant has been in full operation for more than six months (in the event this case is not disposed of before that time), may apply to this court for leave to transfer specific runs from The International Color Printing Company to the Sylacauga plant and to take accounts not eligible to be handled at Sylacauga under other provisions of this order, such application to give detailed information concerning the economic situation of the Sylacauga operation after six months experience, together with full information, to the extent that it is available or obtainable, of the economic condition of The International Color Printing Company, in the event application for transfer of runs now or formerly handled by International is applied for, and said application to propound a specific plan (incorporated in a proposed order) which would accomplish the relief applied for and at the same time guarantee no irreparable loss thereby to The International Color Printing Company in the event this court ultimately includes total or partial divestiture provisions in the final decree herein or to presently existing independent procedures;

(g) That none of the defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation or Dixie Color Printing Corporation, shall represent to existing or prospective color comic supplement printing customers that the color comic supplement printing for such customer will eventually be done by one or any of said defendants at the Sylacauga plant;

(h) That, except for contracts now in existence that so provide, none of said defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, shall solicit or sell color comic supplements on any basis other than actual transportation cost incurred by such defendant or the newspaper involved;

(i) That the defendant, Greater Buffalo Press, Incorporated, its officers and directors, and the defendant, Dixie Color Printing Corporation, shall not convey, sell, lease, transfer or encumber in any manner the stock of Dixie Color Printing Corporation, or any of the substantial physical assets of the plant at Sylacauga, Alabama;

(j) That every three months from the date of entry of this order the defendant, Greater Buffalo Press, Incorporated, shall certify to this court the identity and volume (in terms of fours) of each color comic supplement printing run printed at the Sylacauga plant during such three-month period;

(k) That, in the event that the court eventually orders that the defendant, Greater Buffalo Press, Incorporated, shall divest itself of the stock and assets of the defendant, Dixie Color Printing Corporation, those newspapers then having their color comic supplements printed at said Sylacauga, Alabama, plant shall have the right to make arrangements with the new owners, their sales agents, or any other persons, for the printing of such color comic supplement runs, notwithstanding any existing contract or arrangement between Greater Buffalo Press, Incorporated and such newspapers.

John O. Henderson

JOHN O. HENDERSON,

United States District Judge.

Dated: June 22, 1962.

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[Caption Omitted in Printing]

Proceedings held before Hon. JOHN O. HENDERSON,
United States District Court Judge, Western District of New

York, on December 18th, 1962, at Buffalo, New York.

Appearances: *Elliott H. Feldman & John W. Poole, Jr., Esqs.*, Attorneys for the Plaintiff.

Raichle, Moore, Banning & Weiss, Esqs., by *Frank G. Raichle, Esq.*, and *Ralph L. Halpern, Esq.*, Attorneys for Greater Buffalo Press, Incorporated.

Gallop, Climenko & Gould, Esqs., by *Jesse Climenko, Esq.*, and *Herbert Brownell, Esq.*, Attorneys for the Defendants, The Hearst Corporation.

621 PROCEEDINGS OF DECEMBER 18, 1962, COMMENCING AT 10:00 O'CLOCK A.M.

The COURT: Whenever you are ready, Mr. Raichle.

Mr. RAICHLE: Your Honor, this is the adjourned return day of the motion on the part of the defendants Greater Buffalo Press, Incorporated, the International Color Printing Company, Southwest Colorprinting, Dixie Color Printing, to modify and amend a preliminary injunction made and entered by the Court on June 22, 1962; which temporary injunction, among other things, imposed restrictions and restraints with respect to the proposed operation of the printing plant at Sylacauga, Alabama. Indeed, in view of the evidence of changed circumstances which has been developed, that is, changed circumstances the entry of the preliminary injunction, the motion is to vacate and annul the temporary injunction, to make a new and supplemental finding. The Court has inherent power and control over its orders and decrees, and it should be noted that the motion is made upon all of the papers and proceedings had and taken herein thus far. That, of course, includes the pleadings, the affidavits, the depositions, exhibits and other evidence upon which the preliminary injunction was entered, and the affidavits annexed to the motion or the notice of this motion is the affidavit by myself and one by Mr. Hammond, and accompanying basic exhibit A, by designation, and the note of the independent public accountant which is an integral part of the reply affidavits of Elliott H. Feldman, served yesterday on behalf of the Government; and particularly, the deposition of one Jack R. Hornaday, taken in New York on December 5 and 6 of this year, and certain other proof which, with Your Honor's permission, we will offer on this occasion. Now, Your Honor will recall that Mr. Feldman and I met with Your Honor on October 29 of this year at which

time I furnished Mr. Feldman with a copy of the projections which are now included in Exhibit A annexed to our motion papers, and designed primarily to show the results of operations, if they had been conducted or were undertaken at Sylvauga; to show that the permitted operation would not be economically feasible. At that same meeting with Your Honor,

I announced my desire to take the testimony of Jack R. 624 Hornaday to establish the fact that the Southern Color

Printing Company had greatly increased its business at the expense of International Color Printing and the defendants while we were under these strictures and restraints and to develop other pertinent evidence from Hornaday. It was stated by Your Honor that we could have a broad and searching examination of Mr. Hornaday in that regard, and Your Honor, of course, will recall Mr. Hornaday is the initiator in the first instance of these proceedings. He was a former sales manager or assistant sales manager of King Features Division of Hearst. And by the way, I pause at the mention of the word, "Hearst",

to say that, by the way of information to the Court and 625 counsel, that Mr. Climenko, who represents Hearst and Mr. Brownell stated they would be here at 10 o'clock.

The COURT: They just came in, Mr. Raichle. Would you gentlemen like to come up?

Mr. RAICHLER: Just by way of refreshing Your Honor's recollection, I assure you very briefly, Mr. Hornaday was the former sales representative of King Features, which is a division of Hearst, and Hearst is one of the defendants; indeed, as I read the complaint, the primary defendant, the one against whom predatory practices are charged; and Mr. Hornaday was the man who was in charge of the Hearst operation or the King Features operation at the time of these alleged predatory practices, none of which have been established, I hasten to say. In any event, he left Hearst, King Features, if you please, in

1955, under aggravated conditions, I think importantly 626 reflecting upon his integrity, and went with a competitor whom he had been directed to inquire about with respect to its activities. Soon after he went with this competitor, Southern Color Printing Company by name; having been organized in his own behalf—in behalf of Southern Color Printing Company—something called Atlantic Features; where he proceeded to sell features for something called the Hall Syndicate, and printing for Southern Color Printing. He proceeded to sell

both features and printing, one of the things criticized when he was so doing for Hearst. He sought by letter, which is in the record, the early record, a part of this motion, of course, in consequence there of, to, as I put it, in effect blackmail Hearst for some money, threatening treble damage action and threatening to go to the Department of Justice to complain about the things he used to do on behalf of Hearst. Like all the reformers—the definition goes, one who wants to stop other people from doing that which he used to do. At any rate, he went to the Department of Justice, and was evidently received with open arms, and based upon information furnished by him, largely to the effect that Southern Color Printing Company and Atlantic Features Company which he had proceeded to organize and represent, that is, Atlantic Features Company—Southern Color Printing had been in business since 1946—he began to sell features and printing in competition with our plant International Color Printing, Greater Buffalo Press. These names are all, I am sure, lively in Your Honor's recollection. And the business of Southern Color Printing grew under his salesmanship. His competition was effective, as the figures will show and demonstrate. At the instance of Mr. Hornaday and based upon information furnished by him, we had the Grand Jury proceeding here in Buffalo where the Grand Jury declined to indict, or recommended a civil suit. This suit was brought in consequence thereof. Mr. Hornaday furnished the affidavit in support of the original application made in April of 1961 for an injunction, temporary in character, restraining the opening and the operation of the Sylacauga plant. Mr. Hornaday gave a lengthy deposition; and plaintiffs case, as far as its application for relief, was importantly based upon not only information furnished by Mr. Hornaday and his associate, Mr. Smith of Color Printing, but also an affidavit and testimony furnished by those gentlemen. Now then, on June 22, 1962, Your Honor entered a temporary injunction, which is an order which we moved against from which we seek relief and with respect with the findings upon which it is based, we ask for amendments and supplemental findings in the light of additional proof and we desire to point to chain of circumstances compelling the character of the relief of which we seek. Now, Your Honor will recall and I don't mean to transform this opening statement into an argument, but Your Honor will

recall that the Government at the time of its application and in support of its application for a temporary injunction, made a very strong effort to convince Your Honor and in a measure succeeded, that Southern Colored Printing Company could not stand the competition of a plant at Sylacauga and in the
 631 southeastern part of the United States, in the area where Southern Colored Printing and Mr. Hornaday with his features company had a competitive advantage and that if the plant at Sylacauga opened that Southern Colored Printer would sustain irreparable damage and that he would cry, and the mouthings were all in favor of the expression "status quo", "competitive status quo".

Well now, while we have been under the strictures and restraints and unable to compete with Mr. Hornaday and Mr. Smith, that is the Atlantic Features and Southern Colored Printing, let me tell you what has happened. At the time that Mr. Hornaday went with Southern Colored Features, Southern Colored Features was printing some few hundred thousand, four-page sections per week. That seems to be the unit at which
 632 everybody deals in this industry when discussing the volume, so we will, with Your Honor's permission, talk in terms of weekly 4's, which means weekly supplements of colored comics. And it now prints, that is, Southern Colored Printing does 3,150,000, four-page colored comic supplements, but more important and more pertinent to this application and more clearly demonstrating the inequitable and unforeseen effect of this order, Southern Colored Printing Company at the time that the order was handled was printing 1,200 and some odd thousand 4's per week. Under this order, while the order has been outstanding; that is I speak of the initial restraint of April 1961, as supplemented by the restraints and the temporary injunction of June 22, 1962, that business has grown to 3,150,000. He has more than doubled his business, speaking of Southern Colored Printing Company. Now, where did the
 633 business come from? Except for comparatively few, it all came from International Colored Printing business, which they took away from International Colored Printing. Your Honor will recall the bleeding hearts in the bosoms of the politicians for whom Mr. Feldman spoke, in the depression area of Wilkes-Barre and the union representatives and forlorn picture which was painted of a deteriorating an already aggravating situation if business were permitted to go under our agencies from International Color Printing to the South from Alabama

which you will recall was also a depressed area, but our friends of the Department have raised no voice of protest, no word of criticism, but on the other hand they seem to clasp their hands in approval and approbation of the fact that the spoon-feed, pampered, favored, protected Hornaday, Atlantic Features and Southern Colored Printing Company could take that large volume of business from International Colored Printing Company. Now, I speak within the record which will be developed here when we read, with Your Honor's permission, Mr. Hornaday's deposition, but I digress from this for just a moment to tell you of our difficulties.

After leaving your office on the occasion when Mr. Feldman and I met with Your Honor on October 29th, I noticed the deposition of Mr. Hornaday for the fourteenth or the fifteenth of November. A subpoena was issued out of the Southern District of New York on November 8th. Mr. Halpern, my associate, attempted to serve it on the day, but was unable to. He was first told that Mr. Hornaday was out, then he was at home. That was Thursday, November 9th. A similar effort was made without success on November 10th. A process server went out to Scarsborough and after a brief skirmish found Mr. Hornaday and served him with the subpoena, returnable the following Wednesday.

On the following Tuesday, an order to show cause was obtained by Mr. Hornaday with a stay, staying our examination on the flat sworn statement that he had not been served with a subpoena. That motion, and he made a motion to quash on the basis of his affidavit, that motion was argued before Judge McMahon in the Southern District. Testimony was taken and Judge McMahon found as a fact that the subpoena had indeed been served and Mr. Hornaday was evading service. He stated that from the bench. The minutes of that hearing before Judge

McMahon, I am assured by the reporter in New York, who has been ill, will arrive some time during the day.

Well, the motion to quash the subpoena was denied, but the hour for the examination had passed. We didn't at that moment bother with contempt, we noticed anew the taking of the deposition and we were met with another motion this time, a motion on the part of Mr. Hornaday, claiming that he was ill, recovering tortuously from the effects of a very serious operation and could not attend the examination and there was the usual protestations in that regard and offers of physical

examination and it developed that this gentleman, in failing health, on the day that we sought to examine him, on the day that we were told he was unable to appear by reason of physical incapacity, spent five hours in the Department of Justice and more importantly, he closed a contract taking
 637 hundreds of thousands of 4's in business from International Color Printing.

638 Well, on the 5th or 6th of December last week, I guess it was the 6th and 7th, anyway we examined Mr. Hornaday and, as I say, we desire as part of our proof here this morning, to put forward and in evidence the deposition of Mr. Hornaday from which we claim the fact appears that this competitive advantage which they conceived as being abused, as they claim was unnecessary anyway, demonstrates right on the face of it, and from his sworn testimony—reluctantly given—that the consumers, the newspapers in the area, are losing substantial in freight savings; that as he now claims he doesn't need the order for his protection; that he can compete with us effectively, anyway; that he knows of no complaint to make against Greater Buffalo Press, except for some
 639 inconsequential number of runs which were more of a nuisance than a profit in Sarasota, and another taken years ago, except for that we never took a dollar of his business although he has taken hundreds of thousands of fours from us; that he doesn't know of a single complaint which he could have against us; that his only complaints are the alleged predatory acts of Hearst or King, of which he was the perpetrator, and he says he is able to compete, willing to compete; implies that he is anxious to compete with us even without an order such as gives him an allocated market free from the competition of Sylacauga.

Now then, I don't think it would serve a useful purpose, and it would be unduly burdensome to Your Honor if I, at this juncture, were to mention or to attempt to develop
 640 quickly some facts and figures, but may I on this, my first opportunity, state what I conceive to be a condition of the record and the basis on which I am proceeding? Now we have set forth in our motion papers a reference to the fact that the Government has earlier stated that it is in the public interest for the Sylacauga plant to open. I assume that that position has not been changed. We have set forth what I conceive to be a strong showing and statement of fact that the

printing of the 3,434,000 four-page standard supplements per week as permitted in the temporary injunction, will not permit of an economically feasible operation and will condemn any operation in Sylacauga on that basis to a substantial loss.

641 We have set forth, as I say, projections in Exhibit A, which had been checked as I indicated, by our public accountants and these projections have not been controverted by answering affidavit; they have not been disputed by the Government in any way that has been brought to my attention, and I conceive the record to be as of the moment, that the figures set forth in my projections are not challenged. They could only be in orderly procedure and, as I understand the practice, challenged in an answering affidavit so that we would have an issue on that subject before Your Honor. Mr. Feldman served me with an affidavit which makes no mention of our projections. He admits the substantial increase in the Southern Color Printing Company business and has some reference to freight rates—not quite clear to me as to their 642 pertinency—but save for that, there has been no paper filed by the Government or at least served on me, so I take it there has been no dispute about our figure, which we urge upon Your Honor as the basis for a finding in that respect, as one of the grounds of our motion. Our motion papers show, we urge upon Your Honor, now, the inequitable state of affairs resulting from the temporary injunction and we urge that the situation cries for amendment and change, and I know that contrary to Your Honor's intention, this temporary injunction has hurt people who should not be hurt. There is \$1,350,000 of newsprint that would be purchased for the operation which we desire at Sylacauga, and purchased from United States Mills.

The same amount is now being purchased in Canada. 643 There is a saving of \$160,000.00 or thereabouts to the newspapers in the area, the transportation costs, all developed in Hornaday's affidavit if there could be any questions otherwise about it. There is the Government protected, fostered monopoly of the business by the Southern Color Printing Company and I could see how, on the basis of the previous showing counsel might argue for a continuance of the status quo but I don't believe Your Honor ever could see that under the banner of status quo that Southern Color Printing would be permitted to take all this business without competition, and I don't believe that Your Honor ever conceived as he listened to the cries of those who pled for Wilkes-Barre that Southern

644 Color Printing would be allowed to take with abandon the business which the Government urged that this order was protecting.

And let me not be unduly repetitious but let me point out, as Mr. Hornaday has said, as you will hear when his deposition is read, that he intends to take all the business that he can; he feels uninhibited and he doesn't care a bit about Wilkes-Barre; that's in his words, you will hear it, that on the day we sought his testimony, he was seeking our business, that he has bids out now, expects to hear from any day, and he expects to continue to do so, and I think I would reserve with Your Honor's permission, further comment but with these brief opening remarks which have not covered the grounds with any elements of completeness, I would like to present our case. For

645 counsel's information, I would like to first read the deposition of Mr. Hornaday. I would like to rely upon my papers for the establishment of the figures, the projections at least until in some legal way they are called in question, if indeed they could be. Interesting in that connection is the fact that our projections were furnished to Mr. Hornaday and to Mr. Smith, the Southern Color Printing factotum. Almost as soon as they were furnished to the Government and we have the unholy alliance between the Department of Justice and this man, Hornaday, and this man, Smith—amusing if it weren't so serious—we subpoenaed the contracts obtained by Southern Color Printing during this period of operation by them under the restraint imposed upon us, and quite unabashed, 646 counsel and Hornaday come forward and say, "Oh if you saw those contracts and you knew our prices, we would suffer a competitive disadvantage."

The COURT: Let me ask you what you conceive to be the crux of the Southern Color to the market whereby they obtain this advantage that you talk of?

Mr. RAICHLE: Their geographic location and their ability to take business from International Color Printing on account of the freight savings, the transportation savings which they are able to give in this area to the consumer which International Color Printing apparently can't meet. Now his knowledge, that is, Hornaday's knowledge of Hearst's costs in the early days, now knowledge of our costs in every detail, complete ignorance on our part of their costs, widespread knowledge on the 647 part of consumers that the Sylacauga plant can't be used by us to serve them in this area, the spectacle, if

I might say so, of our competitors sitting in the library of the Department of Justice with our figures, studying them, learning them, knowing how to take business from us, and then telling us that we can't see theirs because it would be a competitive advantage or an advantage to us, and a disadvantage to them in deleting every bit of information concerning costs and prices. As I say, I have not covered it, I have 648 rambled a bit. It was intended to be an opening statement as to all that has gone on before and partly——

Mr. FELDMAN: May I make the suggestion? I would like the opportunity now to put some remarks on the record in answer to Mr. Raichle, and that may cut a great deal of the proof. Many of the things he speaks about the Government is really not at issue with at all.

Mr. RAICHLE: Very well, Sir, I will subside while you do that.

The COURT: I would like to hear from you whether you conceive this advantage has gone to Southern Color since my order.

Mr. FELDMAN: No, sir.

The COURT: Have they gained this advantage, this market?

Mr. FELDMAN: No, sir, not because of the order. We say this order had a salutary effect, it restored competition 649 in this area. I think that the basic position between the defendants and the Government in this case is this; on both hands you have a taking away of assets and business accounts, called the guts of the business, from International Color Printing Company. At least, Greater Buffalo Press would like to take the assets out. They are restrained under this order of this Court of June 22, 1962. On the other hand, you have a company in the Southwest called Southern Color Printing; this concern has taken away business since the order of this Court and particularly since about the end of 1961, from International Color Printing.

The COURT: In Wilkes-Barre?

Mr. FELDMAN: Yes, no question about it.

The COURT: What was the hue and cry about the great trouble at Wilkes-Barre? Weren't you trying to impress 650 me zealously about the failing economy, the troubles in Pennsylvania? Not that I was impressed, that was the big argument?

Mr. FELDMAN: It was. That was only after there was some application made, something put in the record in regard to the

economic plight of the people at Sylacauga. Up to that point we had spoken to people in Wilkes-Barre, and we told these people that the economic plight did not concern us in our legal urgings in this case. That came in later. Initially, that had nothing to do at all, as far as we were concerned. Basically, our position is based upon the following, in paragraph 27 of our complaint, we allege a violation of Section 7 of the Clayton Act. That refers to the acquisition by Greater Buffalo Press of International. We claim that single act, that acquisition, violated the law. Now, in the past the courts have held when a
651 prima facie case is made out, that the violation is unlawful. Then the Government is entitled to an injunction, and the purpose of that injunction is to maintain the status quo between the two companies. That, of course, brings up the question, what do you mean by status quo. Status quo, in regard to Section 7, in regard to a Section 7 case, does not mean the Court must pass and sit upon the industry and act as judicial arbitrator as to what goes on. All it means is that the company which did the acquiring cannot touch the assets of the acquired company. In other words, they remain separate and distinct. They do not operate in any way as a single entity. That is the whole purpose of this injunction. When the separation is kept, then and only then can the Government actually
652 win the case instead of winning a lawsuit or a piece of paper. Your Honor may recall we started out, this is the basic contention, and I would like to refer particularly at this time to the actual order to show cause which Your Honor signed on April 3, 1961. First of all, the order itself, which Your Honor signed, consists of six pages. Until the return date of the motion it prohibits certain things from taking place; namely, the co-mingling and intermingling of International's assets and then going on to page 6, it states that during the pendency of the order to show cause printing cannot be commenced at Dixie Color Printing Corporation with printing presses, machinery, equipment and any other parts shipped from or by International Color at any time since June 1, 1955. In other words, on the face of the order it is only dealing with preserving
653 this thing called International Color Printing Company, nothing else. Now, our order to show cause also annexes thereto affidavits of Mr. Hornaday and Mr. Smith. I make this clear to Your Honor, to point out that while you can say our order to show cause was predicated upon two things; one, the

preservation of International, and second the irreparable injury done to Southern Color Prints. In the main, our order was based upon one thing, to preserve International Color Printing Company under the concept set forth in this order to show cause. It makes no difference whether you take forty per cent of the assets away or a hairpin out of the company, that company must remain the way it was when it was acquired June 1, 1954-1955.

The COURT: Well, did you contemplate in any way that Southern Colored was going to gain any advantage as a result of the order?

Mr. FELDMAN: We were hoping they were going to get more business. Let me go on.

The COURT: From Wilkes-Barre?

Mr. FELDMAN: If possible, under the competition, yes. That is the whole concept of the Government's case. Now, going on to what Mr. Jack Hornaday and Southern Colored Printing, I would like to give you background as to what happened over there. This Southern Colored Printing corporation was founded in 1948 and around 1955 and 1956, they were doing in one week something like 776,000, 4's. Now, as the market goes that is a very, very small amount. They, at the time, did not have a salesman, so they went out and got someone from King Features and while it is a separate corporate relationship between Southern Colored Printing and the sales agencies they do work together. Now, Mr. Hornaday became in effect the operating sales agent for Southern Colored Printing. Now, in this order to show cause, when it was signed by Your Honor, we had information that certain predatory practices were going on in the Southeast. These consisted mainly of so-called tie-in sales, a sale where when you want to sell color print you sell the feature rights and as a result, by control of the feature rights you are able to control the sale of supplements. This, to any extent, only went on to the syndicates. In addition there was an absorption of transportation rates by the people who had the economic power in the area. They also quoted theoretical transportation rates and since transportation is such an important factor in getting business here, the ability to do so usually meant acquiring the order. Now, in the case of one trucker, and trucking is an important thing in that area, there is evidence in our record that International told a particular trucker not to do any business with Southern Color Print. This was the background. The

company had failed to expand and most businesses, when first commencing reach a point where they go forward or completely out of business. Now, when we received information at least of such a nature that we could present to a court as to what was happening with the assets of International and that such assets were being used to build Sylacauga, we then went to Southern Colored Printing and I would like the record to show they did not come to us, but we went to them and asked to solicit information and ascertain what the facts were. Now, they

657 in turn prepared affidavits and these affidavits point out that irreparable injury would be done to them in the event the Sylacauga plant was opened. To begin with they had certain contracts about to expire. Now, if a company can't get any business and is going to lose what it has, obviously that is an irreparable injury and they had the right to assume that the predatory practice was going to continue, in fact, increased, because with the opening of Sylacauga it could be used to completely put them out of business. That was the story then in 1959, they had only one account, in 1960, not any, and in 1961, one account. The company had not gone ahead. In regard to the remarks of hiring Jack Hornaday from King Features, the record shows, that is the deposition today, that King
658 Features was controlled by one individual sales manager, Mr. Nicht. He set the policy and everyone there just implemented what he said. In cases of this type that we are dealing with, there is no moral turpitude involved, the man was told to do it and he did it. We are not here to pass judgment on what Mr. Jack Hornaday did when he left King Features. The fact is, he left and went out and that is what he found. In fact, when the people come to the Department of Justice, it is only when they are hurt that they feel this injustice. The fact that there is a practice that they participated in never occurred to them and it has no bearing at all to this case. Thereafter, Your Honor signed this order to show cause, then we had a period in which we attempted to negotiate and settle the entire
659 motion. Now, information has developed that since April, 1961, they increased their business and so after the deposition—

The COURT: You mean Southern?

Mr. FELDMAN: That is right. And in the amount as stated by Mr. Raichle; no question about that. So what I did, I attempted to conduct an independent investigation and find out who had been on this business, what happened here. In other

words, anyone can say, maybe they increased it, why not give them the benefit of the doubt and say they went out and actively competed for the business. The evidence shows Mr. Hornaday although in Scarsborough, New York, spent half a year going out and continually calling on accounts. In other words, he did a job and the question is to find out what type of job did he do.

Well, I got in touch with six—with five of the newspapers involved. Now, this is attached to our affidavit which I will submit when I am through, Your Honor.

The COURT: What was the question, whether he took a copy of my order when seeking customers, to show what the restraint was?

Mr. FELDMAN: No; the evidence shows, Your Honor, that the whole trade knew about this.

The COURT: Was he asked whether he took copies of it as part of the salesmanship?

Mr. FELDMAN: No. I asked who competed for the accounts. That is the first thing I wanted to know, who are the people who competed. That is the normal inquiry. We go to one particular one, Greensboro News Company, located in Greensboro, North Carolina. Excuse me, may I submit this? Now, in Greensboro at least the publishers owned two newspapers and for years they had been doing business with a company in Waterbury, Connecticut, called Eastern. As the record shows there,

661 Mr. Hornaday came in and bid on the account. The individual, that is the publisher, says that prior to that time he was called upon by someone from King Features and thereafter King Features never submitted a bid. Is there anything wrong with a man going in and getting business under those circumstances? Obviously not. If people come in court and complain there is an economic advantage upon them, the big point is, what did you do to beat the competition in those accounts, that is, the accounts referred to in that affidavit. Is there any evidence that Greater Buffalo, at any time, ever solicited the business? Yet they are one of the parties coming in here and saying that Southern Colored Print has an economic advantage because of the order of June 22, 1962. Now, 662 in passing I would like to remark as to what this case is not about. First of all, all the business of taking the deposition of Mr. Hornaday and how it came about, that is just window dressing. The fact is, the deposition was taken. As far as the Government is concerned, that entire transaction

took place between Mr. Hornaday, his lawyers and defense counsel. The deposition took place in New York and the motions and determinations of the motions were taken in New York, so that is not before this Court at all. The only thing before this Court is the content of that deposition and nothing else. Now, I would also like to point out with respect to remind the Court that while the defendants come in with certain projections, we have indicated that the defendants would be able to open up the Sylacauga operation with 4's of 5,156,888, 663 and that would include not the six accounts they refer to, but an additional account, namely the Louisville Courier Journal and there is then another account, the Memphis Commercial appeal and since July, 1961, that is being printed in Lufkin, but we would consent to any modification of the order to permit them to take it from Lufkin and put it in Sylacauga. Now, the next point raised by the defendants is the fact that if Sylacauga opens up all the newspapers in the South are going to get the benefits of the transportation. Well, we made an inquiry as to what takes place in the transportation. First of all, there are generally what are called general commodity common carriers. That means that these carriers are what is all the common law concept of the common carrier; any- 664 one can go to them at any particular time and they have published prices available to all. Sometime in 1948, there was a judicial determination by the Third Circuit that color comic supplements could under the Interstate Commerce Commission Act be considered newspapers. Now, as far as the shipment of supplements, that had a dramatic effect, because newspapers under the Interstate Commerce Commission Act are exempt from any regulations whatsoever, and as a result, while we have all common carriers filing their schedules with the Interstate Commerce Commission, it means that someone who may have a certificate from the Commission to ship a particular commodity, can on the return, or when going, on his truck or any other transportation form, when it is empty, make any arrangements he wants and ship and set the price. 665 or anything else also that line with the shipper and when he does that he is not prohibited by law from deviating from one customer to another as to price or the conditions under which he is going to ship. That is an important factor in this instance and that means if someone has—someone is a large shipper and has supplements or colored comic supplements go-

ing through a particular area and servicing many newspapers there, such a shipper, if he has a trucker, could generally come out ahead of the game in transportation rates. Such rates would not be made available to the competitors of that particular shipment. There is one other fact in that connection. Generally these companies which offer the special rates, they lack consistency. In other words, you may have them for the first

six months and today or tomorrow they may be lower and/or a year from now changed. In other words, when a rate change takes place, they need not go to the Interstate Commerce Commission and ask for the change to be made, because before the Commission can make a change, the public can come in and the shipper and the competitors can come in and be heard. We urge to this Court in considering problems of transportation, it should be the transportation rates that are made available by the general common carriers to all shippers. Now, generally when such rates are quoted, the

better rate is given to the person who has the geographic advantage. And so when we have a lot of these rates quoted, they are not realistic rates over a long period of time. There is one other thought I would like to talk about, Your Honor, and that is in regard to the particular order here. Now the order that now exists does not direct Greater Buffalo to commence printing operations at Sylacauga. All it says, you are permitted if you want to and if you comply with certain conditions. Now we maintain that the paramount problem in this case is the keeping of International, and keeping the assets compact and the way they were as near as possible as of June 1, 1955.

The COURT: What do you mean by "keeping International"? You mean the survival of it?

Mr. FELDMAN: Survival of it and keeping the assets separate and distinct and not removing anything and whether you remove as the defendants urged at the last hearing, assets which would amount to a forty percent loss in profit or whether you take out five percent as far as the Government is concerned, it makes no difference, that company has to remain the way it is and continue to function. Now the answer as far as Sylacauga is concerned and the answer as far as the defendants are concerned is to urge this Court to have a speedy trial and thereby determine and how the case comes to an end because, in any event, once the case comes to an end Sylacauga could open. It may open under the leadership of the

defendants here, it may open under someone else and at least International can then operate alone or as part of Greater
 669 Buffalo, but that resolves the whole problem. Now this business of coming in and quibbling about three million fours, five million fours, or six million fours doesn't add too much as far as our case is concerned.

The COURT: How long do you think this case would take at trial? What is your estimate?

Mr. FELDMAN: I would say the Government could put it in in about a week, that is about all, and a lot would depend on the pretrial procedure beforehand. In other words it may only take a couple of days and we can have all the documents out of the way, and I might add the Government is willing to sit down with defense counsel morning, afternoon or night and work out something along those lines. Now coming to the next point, that
 670 is these projections here, and as to the talk that we gave the projections to the defendant and so forth—first of all—excuse me, Your Honor, I am sorry, gave to competitors of defendants—now after the first projection which was given me. I don't think Your Honor saw it all at the hearing in Your Honor's chambers on October 29th, only this set of figures was given to Your Honor with the motion papers, and they later appeared in the motion papers. These figures were not given to the Government under any protective order. Your Honor asked us at the particular time to take these figures and come up with an answer as to whether they are realistic, and whether they have any validity. Now I personally don't know that much about the color comic supplement printing industry and the only people I am able to go to are the people in
 671 the industry, and I never assumed for one minute that anything set forth in this projected figure could by any figment of imagination be considered confidential. In fact our evidence will show from people coming in, there just isn't enough information to make an intelligent guess or estimate as to whether the estimate set forth here would have any validity at all. Now as to the projected figures which are set forth here we have oral testimony in the form of people who are ready to testify today, Your Honor. At the present time we have no objection to calling our witnesses.

Mr. RAICHLE: I would like to proceed.

Mr. FELDMAN: Excuse me, I said we have no objection. You may proceed first or last, I am just saying it for the
 672 record.

Mr. RAICHLE: I don't conceive this to be the proper time to argue but I would like to make the record complete, if Your Honor would indulge us in argument.

I cannot permit Mr. Feldman's statements to go unchallenged here. He talks about predatory acts. There is not a single predatory act that anybody could point to or charge against any of the defendants I represent. That is the anomalous part of this thing. The predatory acts charged against others—no relief is sought against anybody but my defendants, nobody suffered except my defendants. The statement about our denuding International Color Print plant is so wide of the mark. Let me refresh Your Honor's recollection. Greater Buffalo Press conceived the Sylacauga venture. A press was bought from a Baltimore newspaper owned by Hearst. An

identical press was purchased by Southern Color Printing Company from the same source at or about the same time. What is so venal is the fact that Greater Buffalo

Press acquired an instrumentality, a piece of machinery, a press? True, International Color Printing employees did some work on it—they could have taken it to a machine shop somewhere else and done it. We moved it to Sylacauga to print. They moved the press from the same source, of the same type, down to their place in the south for Southern Color Printing Company. We don't need—no one needs that drastic remedy. I listened in vain for a 'Why', a good reason it should be continued; for this talk about leaving the plant exactly as it is. This Court is not

in a position to direct that the press be returned to International Color Printing Company, if there is any importance about the whereabouts of the press. It is in the record, and we will develop it in argument and briefs to Your Honor. There is nothing to this proposition at all. It was our press, bought at our expense, paid for by us, by the defendants I represent; not by International, other than International Color Printing, and sent down there, and remained there, deteriorating at great expense. For Government counsel to stand here and say, "Let us not quibble over a few million fours"; we are not quibbling over a few million fours, we are in a Court of law asking relief against something which is, I respectfully submit to Your Honor, inequitable in this operation, not so foreseen by Your Honor. In the light of changed circumstances, ask Your Honor to amend or to vacate it. We are not quibbling over fours, we are

arguing over principles. We are seeking survival. In relationship to the budget of the Department of Justice, I suppose this \$20,000.00 a month loss we have suffered for two years is not important, but it is important to us. I don't know how long we can continue to do it. To argue here to Your Honor that we should be subjected to that and tell Your Honor that he is ready to go to trial—Your Honor was very considerate of both of us, you told us there was not any opportunity to try this case in view of the crowded condition of this calendar. I haven't made any grandstand offer. I will tell you now that we are ready to try the case tomorrow. May I proceed?

The COURT:

676 Mr. RAICHLE: I would like to first offer the—

The COURT: Frankly, I am giving this serious consideration. If I can work it out for very prompt trial, I will. I cannot do it from the bench now.

Mr. RAICHLE: May I have Mr. Halpern read the answers, I will read the questions? I might say that Mr. Hornaday made certain corrections. I don't regard any of them as important. He is entitled to have his corrections made; and in two complete copies I have made all the corrections. I submit to Your Honor the list of his corrections. I assume you have them, Mr. Feldman?

Mr. FELDMAN: No, I don't have them.

Mr. RAICHLE: Well, they are mostly inconsequential improvements of wording or something. I don't believe there is anything changed in substance.

677 Mr. FELDMAN: Excuse me, has the original been filed with the Clerk?

Mr. RAICHLE: I consider this a filing of it right here.

The COURT: I see no reason to have the reporter take this down. However, I would like it copied into the record.

Mr. RAICHLE: Yes.

The COURT: There is no reason for you to take this down. If, on the other hand, there is any argument to be had, you will take it down.

Mr. RAICHLE: I am going to read the entire direct examination. You can read the cross examination?

Mr. FELDMAN: All right, fine.

Mr. RAICHLE: In other words, we don't have the problem of selective portions of it. This is the deposition of Jack R. Hornaday, taken on behalf of these moving defendants, on

Thursday, December 6, 1962, at the office of Mr. Hornaday's counsel. Shall we proceed?

The COURT: Yes.

[Caption Omitted in Printing]

678 "Deposition of JACK R. HORNADAY, taken on behalf of the defendants Greater Buffalo Press, Incorporated; International Color Printing Corporation and Dixie Color Printing Corporation, pursuant to subpoena, at the offices of Gilbert & Segall, Esqs., 405 Park Avenue, New York, New York, on Thursday, December 6, 1962, at ten o'clock in the forenoon, before George Abraham, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

679 "Appearances: *Raymond M. Carlson, Esq.*, Attorney for the Plaintiff, c/o The United States Attorney, U.S. Court House, Buffalo, New York. By: *Elliott H. Feldman, Esq.*, of Counsel.

Raichle, Moore, Banning & Weiss, Esqs., Attorneys for Defendants Greater Buffalo Press, Incorporated; International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York. By: *Frank G. Raichle, Esq.*, of Counsel.

"*Gallop, Climenko & Gould, Esqs.*, Attorneys for The Hearst Corporation, 360 Lexington Avenue, New York, New York.

By: *Jesse Climenko, Esq.*, and *Leo Schwartz, Esq.*, of Counsel.

680 "Gilbert & Segall, Esqs., Attorneys for the Witness, 405 Park Avenue, New York, New York. By: *Robert Layton, Esq.*, and *Robert E. Young, Esq.*, of Counsel.

Baker, Hostetler & Patterson, Esqs., Attorneys for Defendant Newspaper Enterprise Association, Inc., 1956 Union Commerce Building, Cleveland 14, Ohio. By: *Richard F. Stevens, Esq.*, of Counsel.

Lord, Day & Lord, Esqs., Attorneys for King Features, 25 Broadway, New York, New York. By: *Robert Haynes, Esq.*, of Counsel.

681 "JACK R. HORNADY, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY

Mr. RAICHLE:

"Q. Where do you live, Mr. Hornaday?

"A. I live in Scarborough, New York, about thirty miles up the Hudson from the City.

"Q. That is your residence?

"A. That is my residence, yes.

"Q. You are a resident of Scarborough?

"A. Yes, sir.

"Q. In the State of New York?

"A. That's right.

"Q. You are the same Jack R. Hornady who testified a year or so ago in this same suit?

"A. About a year and a half ago I gave a deposition.

"Q. You have been asked to produce some documents here. They are outlined in the subpoena duces tecum. Do you have those documents?

"A. My counsel has.

"Mr. LAYTON: I have those documents on behalf of Mr. Hornady. Would you like them at the present time?

Mr. RAICHLE: Would you identify them for me?

682 "Mr. LAYTON: Certainly.

"Mr. RAICHLE: Then I would like to have them marked, if I may.

"Mr. LAYTON: Pursuant to the subpoena, I have produced six sets of documents, the first of which is a photocopy of an agreement dated August 27, 1962, between Atlantic Features and Printing, Incorporated and Beckley Newspaper Corporation, and attached thereto are copies and originals, of course in connection with that agreement as called for under the subpoena.

"Mr. FELDMAN: How many copies are there?

"Mr. LAYTON: The number of sheets?

"Mr. FELDMAN: Yes, the number of sheets.

"Mr. LAYTON: That would be five sheets in addition to the agreement, a total of six sheets.

"Mr. RAICHLE: Those sheets are the correspondence to which you refer. (Photocopy of agreement dated August 27, 1962, between Atlantic Features and Printing, Incorporated and
683 Beckley Newspaper Corporation, with five sheets attached thereto, was marked Defendants' Exhibit A for identification, as of this date.)

"Mr. LAYTON: Second, a photocopy of an agreement dated November 28, 1961 between Atlantic Features and Printing, Incorporated and the Greensboro News Company, and also

part of the second, photocopy of agreement dated November 28, 1961 between the Atlantic Features and Printing, Incorporated and the Greensboro News Company, and attached thereto correspondence in connection therewith as requested under the subpoena consisting of six sheets.

“(Photocopy of agreement dated November 28, 1961 between Atlantic Features and Printing, Inc., and the
684 Greensboro News Company, and attached documents as above referred to, was marked Defendants’ Exhibit B for identification, as of this date.)

“Mr. LAYTON: Six sheets in addition to the two photocopies.

“Third, a photocopy of an agreement dated June 11, 1962 between Atlantic Features and Printing, Inc. and the Macon Telegraph Publishing Company, along with copies and originals of correspondence as called for under the subpoena totaling ten sheets, and a page of newspaper.

“(Photocopy of agreement dated June 11, 1962, between Atlantic Features and Printing, Inc. and the Macon Telegraph Publishing Company, and attached documents, was marked
Defendants’ Exhibit C for identification as of this date.)

685 “Mr. LAYTON: Fourth, a photocopy of an agreement dated November 27, 1961, between Atlantic Features and Printing, Inc. and Newspaper Agency Corporation, along with correspondence in connection with that agreement as called for by the subpoena, consisting of thirteen sheets.

“(Photocopy of agreement dated November 27, 1961, between Atlantic Features and Printing, Inc. and Newspaper Agency Corporation, and attached documents, was marked
Defendants’ Exhibit D for identification, as of this date.)

“Mr. LAYTON: And last a photocopy of an agreement dated November 30, 1962, between Atlantic Features and
686 Printing, Inc. and the Norfolk-Portsmouth Newspapers, Inc., and attached thereto correspondence as called for under the subpoena consisting of two sheets.

“(Photocopy of agreement dated November 30, 1962, between Atlantic Features and Printing, Inc. and the Norfolk-Portsmouth Newspapers, Inc., and attached documents, was marked Defendants’ Exhibit E for identification.)

“Mr. LAYTON: You will notice that there are excised from the agreements certain portions of the agreements concerning price and the duration of the term of the agreement pursuant to the position taken by the attorneys for the witness and con-

veyed to counsel for the moving defendants herein as constituting information, the disclosure of which would constitute a competitive disadvantage to Atlantic Features and Printing, Inc., and which we are prepared to secure a protective order concerning, and which counsel for defendants has been kind enough to state that it will not be necessary at the present time.

"Those are all the documents which I have to produce.

By Mr. RAICHLE:

"Q. Mr. Hornaday, the subpoena reads in part that you bring with you any and all correspondence, documents and contracts relating to the sale of comic features or the printing of colored comic features between Jack R. Hornaday, Southern Printing Corporation or Atlantic Printing, Inc., or any association of newspapers beginning April 1961 to date.

"Do these documents just produced by your counsel and identified by him in your presence constitute all of the documents comprehended by that passage from that subpoena I just read to you?

"A. They comprehend all the documents in the possession of Atlantic Features or Southern Color Print having to do with that.

"Southern Color Print and Atlantic do not sell features.

"Q. Are there other contracts within the time which is pertinent here, April 1961 to date, which have not been produced relating to the features or the printing features for any of these newspapers by Southern Colored Printing?

"A. No, sir. Southern Color Print and Atlantic, as I have said, do not sell any features and do not have any files about features. They are only concerned with comic printing.

"I do sell, as the record shows, features for the Hall Syndicate, but I have no correspondence on that. I don't keep that correspondence.

"Q. There is no correspondence comprehended by the passage of the subpoena which I just read to you which is in existence and has not been produced?

"A. Not to my knowledge, sir.

"Mr. LAYTON: May I state for the record, the correspondence which was turned over to me by Mr. Hornaday has all been produced with the exception of those letters which I considered gave the exact information which was excised from the contract itself regarding price and duration of the term of the agreement.

"That is the only correspondence which has not been produced.

"Mr. RAICHLE: We are reserving our rights in this situation, but I am not initially quarreling with you about the excised portion of the documents.

By Mr. RAICHLE:

"Q. You heard your counsel say that it would be a competitive disadvantage, to use his words, to disclose the information which has been excised. Do you agree with that?

"A. Yes, sir.

"Q. Do you have in your possession and have you acquired such information pertaining to your competitors prices and information?

690 "A. That is a double barreled question.

"Q. Answer it one barrel at a time.

Mr. LAYTON: Read the question back.

(The pending question was read back by the reporter.)

"Mr. LAYTON: Are you referring to this particular period of time from April 1961 to date?

"Mr. RAICHLE: Let's take that first.

"The WITNESS: There have been from time to time occasional imparting to me by some newspapers of what rates they were paying.

"That is a very small percentage. Most publishers tell you that they don't give you the price that they are paying to another printer and they don't give the other printer the price they are paying you.

By Mr. RAICHLE:

691 "Q. Has the Department of Justice or any representative of the Department of Justice conveyed any information to you?

"A. You mean any information as to prices?

"Mr. LAYTON: You mean in writing, orally?

"Q. Orally or in writing pertaining to the price, terms, conditions of the sale of printing by your competitors, any of your competitors?

"A. No, sir; except that in the records of this trial—I mean of my previous deposition one of the defendants' exhibits having to do with the New Orleans contract presented by the defendant, and I did see that.

"Q. Have you looked at any papers in the Department of Justice produced by the defendants in this case?

"A. I looked at some figures, but I didn't understand them, that the Department of Justice had about cost of printing in Sylacauga.

"Q. When was this?

"A. Last week.

"Q. What day?

"A. I believe it was Wednesday, sir; it might have been Tuesday.

"Q. It was either Tuesday or Wednesday of last week?

"A. Yes, sir.

692 "Q. Was it the same day that your counsel was appearing in the Federal District Court here in the Southern District of New York?

"A. I believe he was appearing that day, yes, sir.

"Q. Making the representations as to your physical condition?

"A. That's right.

"Q. How long were you at the Department of Justice?

"A. Two, three hours.

"Q. Whom did you see there?

"A. I saw Mr. Feldman.

"Q. Did you go over with Mr. Feldman the motion papers in this application?

"A. No, sir. I read my deposition, my previous deposition which I did not have with me at the time. That is the reason I went to Washington to look at this.

"Q. In addition to that you looked at the two projections, columns 1 and 2, did you not?

"A. I looked at a sheet. I don't think I even read it. I saw a sheet there having to do with cost figures.

"Q. Projected cost of operations at Sylacauga?

"Mr. LAYTON: Is that a question?

"Q. Isn't that so?

693 "A. I think that is what it was.

"Mr. RAICHLE: So often the tone of voice implies a question.

"Q. Did you discuss those two columns with Mr. Feldman?

"A. No, sir.

"Q. Did he exhibit it to you?

"A. Well, he must have handed them to me or showed them to me, or somebody around there must have.

"Q. Who else was there? You say "somebody".

"A. Mr. Smith.

"Q. What Mr. Smith?

"A. Mr. Robert D. Smith of Southern Color Print Corporation.

"Q. You were both there?

"A. He was there; yes, sir.

"Q. When did you get to Washington, a day before?

"A. Let me see if I can't think of the exact day, sir.

"Q. It would be helpful.

"A. When was my deposition here scheduled? Was it last Thursday?

"Q. Your deposition was scheduled for last week.

"A. That was the original schedule, yes.

694 "Mr. LAYTON: Wednesday, November 28th.

The WITNESS: Then it was Tuesday, it was a day

before.

"Q. How did you happen to go the Department of Justice?

"A. Because I wanted to see my deposition.

"Q. After you got the subpoena?

"A. I never got the subpoena.

"Q. How did you know what to bring here?

"A. My lawyer told me that there was such subpoena.

"Q. You say you have never seen the subpoena?

"A. I didn't say I never; I never had gotten it to that time. I have seen it in my lawyer's office when I came here.

"Q. Was it at the Department of Justice?

"A. I don't remember.

"Q. Did you discuss the question of whether you had been subpoenaed or not with the Department of Justice?

"A. Yes.

"Q. With Mr. Feldman?

"A. Yes, sir.

"Q. When did you first know that a subpoena was out for you?

695 "Mr. LAYTON: I have been very tolerant up to this point, sir. I think that we are going a bit astray, and if you have questions you want to ask concerning your motion, in the main, why go ahead. I don't think that we are going to open the entire matter of this subpoena up again at this time, are we?

"Mr. RAICHLE: I am as pleasantly and courteously as I know how.

"Mr. LAYTON: I can inform you as courteously and pleasantly as I can at the present time that I will direct the witness not to answer questions concerning the serving of the subpoena.

"If you want to make an issue of that, I am perfectly prepared to do so.

"By Mr. RAICHLE:

"Q. Mr. Witness, do I understand you are not going to answer any questions pertaining to the service of this subpoena?

696 "A. I won't answer any questions that my counsel advises me not to answer, sir.

"Q. If he advised you not to answer questions concerning the service of this subpoena, then you won't answer them; is that it?

"A. That is correct, sir.

"Q. I will ask and see what happens. When did you first know that the Greater Buffalo Press was applying for a modification of the Court's order of June 22, 1962?

"Mr. LAYTON: At this point I would like to make a statement for the record and say that the matter of the service, or the purported service of this subpoena, was a matter handled by counsel for the witness. It was subject to a Court adjudication.

"Mr. RAICHLE: And the court found that the subpoena had been served upon him.

"Mr. LAYTON: If you will permit me to finish my statement, I'd be glad to let you finish yours.

"The Court in its wisdom found that the subpoena
697 had been properly served. Subsequent to that time, a later motion for protective order was made which I signed. It is still subjudicing and the witness has appeared here today voluntarily, is presently here pursuant to agreement between respective counsel, and we are entirely willing to make Mr. Hornaday available subject to the state condition of his health, in cooperation with the moving defendants.

"However, if this is going to be broadened into a re-inquiry into a matter that was determined by the Court sitting in the Southern District of New York, I will direct the witness not to answer the questions and we will have another Court determine that at a later time.

698 "I further state that Mr. Hornady, pursuant to agreement, is going to testify for the two hours each day and as long thereafter as the state of his health permits, subject to

the rights of counsel for the defendant to have Mr. Hornady examined by a doctor of their own choosing in New York City. "If that agreement cannot be adhered to, I understand, we then are back in the hands of the Court in the Southern District of New York.

"I am finished.

"By Mr. RAICHLE:

"Q. Mr. Hornady, the condition of your health permitted you to go to the Department of Justice on the very day that you were directed to be here to give your testimony; isn't that true?

"A. Mr. Raichle—

"Q. Isn't that true, sir?

"A. That is true, yes.

"Q. You spent several hours there, as you have told

699 us—
"Mr. LAYTON: I would like the witness to be able to finish his answer.

"Mr. RAICHLE: Please direct him to give a responsive answer.

"Mr. LAYTON: He answered it 'Yes, but'. I think he should be able to finish the 'but'.

"Q. How long were you at the Department of Justice?

"A. Three or four hours sitting in the library reading my previous deposition, which required no strain whatever.

"Q. Where were you when you were looking at the projections of the cost of operation of the Sylacauga plant? Was that in the library too?

"A. No, that was not in the library. I think that was either in Mr. Feldman's office or outside of his office, and that it was shown to me by Mr. Smith, on my recollection.

"Q. Was Mr. Feldman present when Mr. Smith showed it to you?

700 "A. I am not sure of that. He was in and out of the area where Mr. Smith and I were.

"Q. So that Mr. Smith of Southern Colorprint Company had these projections which we had furnished to the Department in connection with our application?

"A. That is correct, sir.

"Q. You and Mr. Smith discussed them, did you?

"A. Yes, sir.

"Q. Were you generally in agreement with what the projections showed?

"Mr. LAYTON: I will object to that question. I don't think we want conclusions or opinions of the witness.

"Mr. RAICHLE: That is a fact. I press that question.

"A. As I said a while ago, what Mr. Smith said to me about these figures went off my back like water off a duck's back. I was not concerned with them. I wasn't feeling well and I was anxious to get that deposition read. I thought it might be my last opportunity to look at the deposition before this deposition.

"Q. Do you know how Mr. Smith happened to have
701 our projections with him?

"Mr. LAYTON: Do you want him to guess?

"Mr. RAICHLE: I asked him if he knew.

"A. I think Mr. Feldman gave them to him.

"Q. Did he give them to him in your presence?

"A. No.

"Q. Mr. Feldman and Mr. Smith discussed the projections in your presence?

"A. I think some aspect of them, sir.

"Q. What aspect?

"A. I have forgotten, sir. I wasn't paying much attention, as I said. That was not part of my—

"Q. It was made known to you, was it not, what the purpose of this application on the part of the Defendant Greater Buffalo Press and Dixie Color Printing was?

"A. You mean that they wanted to amend the motion that the Court—

"Q. Amend the Court's order.

"A. Yes, I knew that.

"Q. Who told you that?

"A. I first heard about it from Mr. Smith.

"Q. When? On what day?

"A. I don't remember, but it was when I was at home recuperating after my operation.

702 "Q. Prior to the 10th of November?

"Mr. LAYTON: Of 1962?

"Mr. RAICHLE: Yes.

"Q. The 10th is the day on which we claim the subpoena was served and that is the date on which the Court found the subpoena was served.

"A. Then it was prior, sir, if that date is correct.

"Q. How long before?

"A. I can't remember, sir.

"Q. A few days?

"A. Probably.

"Q. Did Mr. Smith call you on the telephone to tell you?

"A. He either called me or I called him. We were in frequent telephone communication.

"Q. But it was from Mr. Smith on the occasion of a telephone conversation, initiated by him or by you, that he told you that Greater Buffalo Press and these defendants were making this motion?

"A. To the best of my recollection, sir.

703 "Q. He told you the object of the motion, as you put it, to amend the Court's order?

"A. That's right.

"Q. That is the order imposing restraints upon the defendants or certain of them?

"Mr. LAYTON: It is the Court order.

"Q. You are familiar with the order?

"A. Yes, I was familiar with it at the time it was issued.

"Q. You have discussed that order with various of your prospective customers, haven't you?

"Mr. LAYTON: I object to the form of that question.

"Q. In the solicitation of business, you have referred to that order?

"A. I don't think so.

"Mr. LAYTON: I suggest that you rephrase the question. I prefer not having testimony put into the witness' mouth. Just ask the question.

"Mr. RAICHLE: What would you like me to ask him?

"Mr. FELDMAN: Suppose we have the question read back.

"(The pending question was read by the reporter.)

704 "Mr. FELDMAN: I am going to object to the form of that. There are two parts to it; one, whether he discussed it, and two, whether in the solicitation.

"There has been no testimony from the witness whether he ever discussed it with his competitors, to begin with.

"Mr. RAICHLE: I didn't say with his competitors.

"Mr. FELDMAN: I mean with customers.

"Mr. LAYTON: Why don't you break it down and take it one at a time?

"Mr. RAICHLE: Yes, I am quite unhurried about it.

"By Mr. RAICHLE:

"Q. During the period of the pendency of this lawsuit, which was started in January 1961, you have been actively soliciting the printing from various newspapers, haven't you?

"A. Yes, sir.

"Q. In the various states mentioned in the order?

"A. That's right.

705 "Q. You have been continually soliciting such business, have you not?

"A. Yes, sir.

"Q. You are continuing to do so today?

"A. Yes, sir.

"Q. And you have been——

"A. May I make this reservation, that for a period consisting of August, September, October and November, I was either on vacation or my wife was sick or I was recuperating from an operation. During that period I didn't solicit any printing business.

"Q. Except for some overlying circumstances, you have continued to solicit?

"A. Yes.

"Q. Except for those circumstances, you have continually solicited business in those states mentioned in the order from the various newspapers therein located; correct?

"A. Since the order was issued, sir, my period of soliciting has been a great deal less than in the period when I was not soliciting business.

"Q. Would you explain what you mean by that?

706 "A. I mean that the order was issued in June. In July I was in New England and New York State in behalf of the Hall Syndicate, which had nothing to do with printing. In August I was at home on my vacation. In November I was in Virginia from two to three weeks waiting for my wife to recover from a major operation she had in November.

"Mr. LAYTON: Do you mean in September?

"The WITNESS: I mean September, I'm sorry. Then after returning from Virginia, I was in New York until the last part of November, at which time I was operated on, and at home for several weeks.

"Since then I have made one trip to the southern area which is concerned with this matter.

"Q. Excuse me for interrupting.

"By 'the matter', you mean the matter of solicitation?

"A. No, the matter of this order that this deposition covers.

707 "I made one trip to the South, most of which time I spent in my office at Newport News, Virginia. But en route down there I called briefly on several newspapers in behalf of the Hall Syndicate. I called on one newspaper in Virginia about printing their coming supplement. I called on another newspaper in Virginia subsequently about printing the comic supplement.

"Actually, since this order was made, I have called on those two newspapers and I may have called on Beckley, West Virginia.

"I have forgotten exactly when I flew from New York down to Beckley, West Virginia. I think it was after the order.

"Q. Let's take the Beckley incident. That is covered by one of the documents just marked in evidence?

"A. Yes.

"Mr. LAYTON: Before you do that—I believe you may have said in November in connection with the operation of your wife.

"The WITNESS: No, that was September.

708 "Q. What you are getting at there, if I understand you, is that your solicitation efforts were interrupted by these series of circumstances?

"A. That's right, they were almost completely obliterated.

"Q. But despite the interruption, you did the best you could in the way of solicitations, didn't you?

"A. I called on, sir, three newspapers concerning comic supplement printing.

"Q. Let's go to the Beckley incident.

"A. Yes, sir.

"Q. Where is the Beckley paper?

"A. That is in Beckley, West Virginia, which is about fifty to seventy miles south of Charleston, West Virginia.

"Q. When did you get their business? You can look at anything you want to refresh your recollection.

"(Witness refers to document.)

"A. Contract is dated August 27th.

"Q. Of what year?

"A. Of 1962, but I was down there a couple of weeks before that date, which would mean about August 10th.

709 "Q. Who previously did the printing that you got under that contract?

"A. International Color Printing at Wilkes Barre,

Pennsylvania.

"Q. How did you get the business?

"A. I got the business by quoting a price which was favorable and by finding out that the newspaper could have the supplements hauled from Newport News at a good deal lower cost than they were hauled from Wilkes Barre, Pennsylvania.

"Q. You got it on the basis of price then?

"A. Yes.

"Q. One of the elements of price was the transportation charge?

"A. That is correct, sir.

"Q. The savings you were able to effect for them?

"A. That's right, yes, sir.

"Q. Could we cut through quite a lot of minutise by saying that printing is sold largely on the basis of price?

"A. Almost altogether, sir.

"Q. One of the important elements in the make-up of the price, of course, is transportation charges?

"A. That is correct.

710 "Q. The geographic locations of a plant in all instances is of some importance?

"A. Yes, indeed.

"Q. That transportation charge or the diminution of it represents a saving to the newspaper?

"A. That's correct; yes, sir.

"Q. Over the price he would have to pay if it was transported from some place farther away?

"A. I say yes, with qualifications; that some printers have made what is known as delivered deals, that they just charge a price FOB the newspaper. Where the newspaper pays its own transportation, when they can get their comics transported cheaper, of course, it is savings for the newspaper.

"Q. Since price is the important element in the placing of business and from your point of view, getting the business—I am speaking of the printing of colored comic sections—I suppose price must be the principal subject of discussion when you negotiate with the newspaper?

"A. No question of that, sir.

"Q. No question but that is true?

711 "A. It is the main thing that is said, It may not require more time than other discussions, but it is the main thing that I have found most of the newspaper executives are interested in.

"Q. Did you discuss with Mr. Feldman—and I am not picking on you, Mr. Feldman—this business which you were obtaining in this—

"A. Excuse me. Will you start the question again?

"Q. Did you discuss with Mr. Feldman the business which you were acquiring from International Color—

712 "Printing from time to time or at any time?

"A. I haven't discussed with Mr. Feldman any of this business until this motion for an amendment came up and he asked me, 'Did you get this additional business?'

And then subsequently I told him about Norfolk yesterday.

"Q. Tell us about Norfolk.

"A. It is very simple; that I signed a contract with Norfolk, which is in evidence, last Friday, whereby I was to start printing their comic supplements next March.

"Q. From whom did you take that business?

"A. Wilkes Barre International Color were doing this printing, but King Features held the contract.

"Q. Did you get that on the basis of price?

"A. Oh, yes.

"Q. Transportation saving?

"A. Yes. It is right there at Newport News, as Mr. Moore said, in my previous deposition during which he taunted me twice for not having Norfolk printed at our plant. He referred to Norfolk as being in the backyard of Newport News.

713 "Q. Was that offensive to you?

"A. No, it wasn't offensive, but he tried to make it a taunt, let's say, apparently.

"Q. Will you just take them one by one in your own way and you can look at any source which you need to refresh your recollection and tell us from January 1, 1961, to date, what business you have acquired for Southern Colorprinting Company?

I'd be grateful if you can give it to me in terms of units of weekly fours. That seems to be the way we have been discussing this thing.

"A. This subpoena asking information from April 1st. You just asked from January 1, 1961. I have not searched my records or my memory for that period between January 1st and April 1st.

"Q. Take April 1st.

"A. Since that time—

"Q. Let's have it clear on the record what we are talking about. April 1, 1961 to date.

"A. That's right.

"Q. Tell me, if you will, please, in your own way, what business you have acquired for Southern Colorprinting and from whom you took it?

714 "Mr. LAYTON: Why don't we take them in the order that we have introduced these exhibits for identification?

"By Mr. RAICHLE:

"Q. Can you give me the weekly volume of fours?

"A. I can approximate it, sir.

"The Beckley, West Virginia Post Herald and Raleigh Register, their draw or run is 28,500 eight-page standard, which is equivalent to twice that many four-page units would be, if my arithmetic is correct, 57,000 four-page units.

"The Macon, Georgia Telegraph News, which contracted for 66,000 twelve-page standard size comic supplements, which, translated into fours you would multiply by three, and that would be 198,000 four-page units.

"Charleston, West Virginia Gazette Mail, the contract for which shows 100,000 twelve-page standard size comic supplements, but which I happen to know is actually drawing 111,000 twelve-page standard size comic supplements, which multiplied by three, gives 333,000 four-page units. Now Sir, that is the printing that is already in my plant.

715 "Do you wish to include Norfolk, which would not come into my plant until next March?

"Q. I would like to have Norfolk included.

"A. I am happy to have it.

"Q. You say you are happy to have it?

"A. I am happy to have Norfolk, and I am happy to accommodate you.

"On some date in March, the exact date escapes my recollection, we will start printing the comic supplement of the Norfolk, Virginia Pilot, which will consist of approximately 160,000 twelve-page units.

"Multiplying that by three, I believe it is 480,000 four-page units. That is all I have taken during that period from any of Mr. Koessler's operations.

"Q. You took every dollar of that business from Wilkes Barre, Pennsylvania, International Color Printing, didn't you?

"A. That is correct, yes, sir.

"Q. That is the distressed area we heard about?

"A. I heard of it as a distressed area, yes.

"Q. That didn't inhibit you from taking the printing, did it?

"A. No, sir.

716 "I am not primarily concerned with distressed areas.
I am employed by Atlantic Features, and I am primarily concerned with their affairs.

"Q. This is business, and you felt you would go out and get it, isn't that so?

"A. That is correct, sir.

"Q. You got it on the basis of price?

"A. Yes, sir.

"Q. Transportation savings?

"A. That is right, yes, sir.

"Q. What is the aggregate of all these? Would you be kind enough, if it isn't an imposition——

"Mr. RAICHLES Or somebody who has been writing them down.

"The WITNESS: Yes, I wish somebody else would add them up.

"Mr. FELDMAN: Here is what I got.

"Is that right?

"Mr. RAICHLE: It's all subject to correction.

"Mr. CLIMENKO: Isn't it approximately 1,100,000?

"The WITNESS: I want to say, sir, that you have asked me where did this printing come from.

717 "It did come from International Color Wilkes Barre,
to the best of my knowledge. But the contracts were
held, all of them, by King Features Syndicate.

"By Mr. RAICHLE:

"Q. I am asking you about where the printing was done prior to the time you got the business.

"A. That is right.

"Q. You got all that business on the basis of price as you told us?

"A. Yes, sir.

"Q. With the transportation saving?

"A. Yes, sir.

"Just a moment, sir. Macon was one of these, wasn't it?

"Mr. FELDMAN: Yes.

"A. There was no saving in the Macon transportation. The rate that we obtained from the trucker carrying Macon was from Newport News to Macon, and it was identical with the

rate that had been paid to that same trucker for hauling those supplements from Wilkes Barre to Macon. On a transportation basis, we were even with King Features Syndicate's International Color, where Macon was concerned.

718 "Q. You got the same trucker?

"A. Yes.

"Q. You got the business and the truck, did you? What was your weekly volume of fours on April 1, 1961, approximately if you can give it?

"A. I think around one million and a half, one million, six.

"Q. Then you went from one million, six to a million, eight?

"A. It depends on the figures there. Somebody there has the figures.

"Q. You greatly enhanced your business?

"A. Oh, yes.

"Q. By some 70 percent, 80 percent, something like that?

"A. I haven't figured it out, but that could certainly be a reasonable estimation, sir.

"Mr. LAYTON: The figures will speak for themselves.

"Mr. RAICHLE: That is why I didn't think he would be diffident about mentioning them.

719 "Q. Mr. Hornady, tell me, were you aided in the solicitation of this business, in your opinion, by this decree, by this order?

"A. No, sir.

"Q. Do you think you would have gotten an order without the order?

"A. Absolutely.

"Mr. RAICHLE: I thought this might be more intelligible to you if I make this point. If the order aided him in getting the business; we argue that the order accomplishes an active bit of inequity. If the order didn't help him to get the business, he can get it without, then we say there is no basis for the finding urged upon you by the Government before that the order was necessary to protect Southern Color Printing from irreparable damage. We claim that if the order helped him, that is the reason for vacating the order. We say if the order had no effect upon it, as he said, then, certainly, the
720 other order doesn't exist for his protection and one of the basic findings, in effect. I don't mean to argue, just to point out my contention.

"Q. Therefore the order isn't necessary for your protection, is it?

"Answer that, please.

"Mr. LAYTON: Do you want an opinion on that?

"Mr. RAICHLE: Yes, I will take his opinion. He said he would have gotten it anyway, that the order had absolutely nothing to do with it.

"A. Mr. Raichle, are you referring to the order in June, or the order handed down by Judge Henderson in Buffalo, in June, regarding—

"Q. The restraint started in April. You know that.

"A. Yes.

"Mr. LAYTON: Are you asking this question with respect to these particular six contracts?

"Mr. FELDMAN: Not six.

"Mr. RAICHLE: When you fellows get through kicking my question around, I will try it again.

721 "The WITNESS: I have to understand your questions, Mr. Raichle, to be able to give you the proper answers to them.

"Mr. LAYTON: Why don't you repeat the question?

"Mr. RAICHLE: It seemed to invoke so much discussion, I will see if I can improve on it.

"By Mr. RAICHLE:

"Q. Early in April, the court restrained the opening of the Sylacauga plant; is that right?

"A. April 1961, yes, sir.

"Q. Since that time you have gotten this business to which you have referred?

"A. Yes, sir.

"Q. And to which you have been testifying?

"A. Yes, sir.

"Q. You got it in the way you said you did?

"A. Yes, sir.

"Q. On the basis of price?

"A. Yes, sir.

"Q. Are you actively now, today, except for this interlude, soliciting business?

"A. I have been, to a limited extent in recent months and I expect to be after the first of the year.

722 "Q. You are going to get such business as you can?

"A. That is right, sir.

"Q. On the basis of price?

"A. That, quality, all the things that go into it.

"Q. Price and the complete service?

"A. Transportation, all that.

"Q. In your intention to continue to solicit, you are going to stress the matter of transportation saving, aren't you, to the prospective customers?

"A. If it has a bearing.

"Q. And it has a bearing in those southeastern states mentioned in the order, doesn't it?

"A. Yes, sir.

"Q. It is important there?

"A. Yes, sir.

"Q. While the Sylacauga plant can't print in competition with you and meet those transportation savings, you intend to go out and mention the transportation savings and stress the transportation savings in your solicitation of business.

"Isn't that true?

"Mr. LAYTON. I will object to that question. If you 722-a will ask a question, you can get an answer. If you want to make a speech, then I would characterize that—

"Mr. RAICHLE: If I want to make a speech, I will find a better audience than you. Let's not characterize my question as a speech.

"Mr. LAYTON: You have got a large audience now. I will so characterize the question.

"If you want to rephrase it, you are privileged to do so.

"Mr. RAICHLE: You wear me down."

"By Mr. RAICHLE:

"Q. You intend to continue in the future, in the matter of solicitation, as you have in the immediate past, isn't that so?

"A. Yes, sir.

"Q. On what date did you get this Norfolk job that Mr. Moore talked to you about?

"A. Last Friday, which, I believe, was the 30th.

"Q. Did you go to Norfolk to get it?

"A. From Newport News, yes, sir.

"Q. When did you know that you were going down there to get that business if you could?

723 "A. The previous week.

I had my appointment the previous week. Before I left New York to go to Newport News and visit my plant and catch up with the work that had been neglected because of my illness, I intended to run over to Norfolk, the few miles, and see if there was any chance that I might get the business.

"Q. When you left——

"Pardon me. Had you finished?

"A. I finished.

"Q. When you left New York, you intended to solicit or button up this business, didn't you?

"A. Button up is not the word.

"Q. You find a happier way of saying it.

"A. I will quite easily.

I intended to call on that newspaper and explore the matter about printing their comic supplement.

"Q. That was the object of your trip, wasn't it?

"A. No, sir.

"Q. What was the object of your trip?

"A. The main object of my trip was to catch up with my business at Newport News which I had neglected due to my illness, and also because I knew of the pendency of this deposition to go through my records down there and find materials which were subpoenaed or going to be subpoenaed and also, go through all my files and refresh my memory to the best of my ability.

"Q. Had you seen the subpoena at this time?

"A. No, sir. I had been told about it by my attorney.

"Q. What day did you leave New York?

The episode, shall we call it, of the subpoena was on the 10th.

"Mr. LAYTON: At this time, I am going to renew——

"Mr. RAICHLE: I am just fixing a time. I am not asking about the episode.

"Q. The subpoena episode, call it what you will, was November 10th, a Saturday.

When did you leave New York?

"Mr. LAYTON. I am going to direct the witness not to answer that question.

Mr. RAICHLE: I press the question.

Mr. LAYTON: I direct him not to answer it.

Q. Did you have your appointment prior to the 10th, that is, your appointment with the Norfolk people?

"A. No, sir. I had no appointment.

"Q. When did you make it?

"A. I made the appointment when I was in Newport News.

"Q. On what day?

"A. Has anybody got a pocket calendar that I could refer

to?

"Q. I was trying to give you some dates. November 10th was a Saturday. You can orient yourself from that.

"Or, if Saturday is distasteful, take the 12th. The next day would be the 13th.

"(A calendar was handed to witness.)

"Mr. LAYTON: Can we have the question read back?

"Mr. RAICHLE: I haven't forgotten it.

"Mr. LAYTON: I prefer the witness to get it."

"(The requested portion of the record was read back by the reporter.)

"A. I don't remember the exact date, but it was a week, the early part of the week of November 12th.

"Q. Would this be a fair statement of the fact; that while we were trying to get your testimony you were out getting our business?

726 "Mr. LAYTON: It would certainly be a characterization that you would like to place upon it.

"Mr. RAICHLE: I will take his word. What does he say about that?

"A. I think the testimony shows that I went to Newport News and made my appointment to see Norfolk, and that I was working for a few hours a day in my Newport News office going through the record.

I think that is evidence.

"Q. I mean, at the very time we were seeking your testimony, you were soliciting our business?

"A. That is correct, sir.

"Mr. LAYTON: Who is 'our'? Whose business are you referring to, sir.

"Q. International Color Printing.

You are soliciting the printing that was being done at International Color Printing, right?

"Mr. LAYTON: There is no testimony here that I recall that this business was your business.

"Mr. RAICHLE: Call it what you will.

727 "Q. You were out seeking the printing business that was being done by International Color Printing at the same time we were seeking your testimony, right?

"A. Yes, sir.

"Q. After you got the business, you came up here to testify?

"A. I came home, yes, sir.

"Q. Mission accomplished?

"Mr. LAYTON: Is that a question?

"Mr. RAICHLE: Yes.

"Mr. LAYTON: Or is that just a continued addition to your previous testimony?

"Mr. RAICHLE: My testimony?

"Mr. LAYTON: Yes. I think that is what we are having here.

"Q. Was your mission accomplished?

"A. A number of my missions were accomplished. I was able to catch up with my work at Atlantic Features headquarters. I was able to get the Norfolk business. And I was able to have certain conversations with Southern Color Print. I was able to get together the information required by this subpoena. I was able to call on one other paper, to discuss the printing of their comic supplement.

728 "Q. Which paper was that?

"A. The Richmond Times-Dispatch.

"Q. What day were you there?

"A. I think it was the 15th of November.

"Q. That is your best recollection?

"A. Yes.

"Q. What day of the week was it, do you know?

"A. That would be a Thursday. (It could have been the 14th; I am not positive.)

"Q. What was that name?

"A. Richmond Times-Dispatch. I know that I took three days to drive to Newport News, which I normally drive in one day, and I went by Richmond, which is one of the best ways to go from Washington to Newport News.

"Q. You took that route so you could make this solicitation, didn't you?

"A. Frequently I have taken that route when I was not stopping at the newspaper.

"Q. No, but this time you were going to stop and solicit some business?

"A. That is right.

"Q. You saw nothing wrong with that?

"A. No, of course not.

729 "Q. You were going to solicit it on the basis of price?

"Mr. LAYTON: Before Mr. Hornady was interrupted I believe he was answering your question.

"Mr. RAICHLE: Tell him what he was going to say before he was interrupted.

"Mr. LAYTON: I believe he was interrupted when you asked him another question. I want to ask him whether he was finished describing the activities which he was engaged in entirely.

"Mr. RAICHLE: I will join in the question.

"The WITNESS: You mean was I finished when I came back to New York?

"Mr. LAYTON: No. You were describing, as I recall, the activities which you were able to accomplish when you were interrupted by the questioning.

"The WITNESS: I think I had finished with the main activities.

"Mr. LAYTON: Fine.

"By Mr. RAICHLE:

"Q. I haven't shut you off, have I?

"A. I wouldn't expect a courteous gentleman like you
730 to shut me off.

"Mr. FELDMAN: Let's go on.

"Q. Have you some negotiations pending now for the sale of printing to be done by Southern Colored Printing, pending right now?

"A. I have two or three bids out.

"Q. Where are those bids?

"A. It seems to me that that is a matter of my own knowledge, that imparting that knowledge would give a competitive advantage to my competitors—my competitor who is present.

"Q. Would you tell us in what states they are?

"A. There is one in Florida, one in Indiana. I believe they are the only ones that I am expecting to hear something from. I have made bids on a few others some months previously and had no answer.

"I have decided that, for the present, that that is not possible to be turned into acquired business.

"Q. You feel uninhibited, unrestrained, in any way so far as the solicitation of business, as far as these southeastern states are concerned, don't you?

"A. That is a pretty broad question, sir.

731 "Mr. LAYTON: You are asking that legally, morally, esthetically?

"Q. Let us take the various elements. You don't feel morally restrained, do you?

"A. I would feel morally restrained to misrepresent to any of these prospective customers.

"Q. I am not implying that you do. I am taking counsel's words. I am trying to use his words now.

"A. There are restraints that any honest man uses in his conduct of business, so I am not without restraint.

"Q. Short of these moral considerations, which seem to be—

"A. I have no restraint in my desire and purpose of getting whatever business I can get for Atlantic Features legitimately.

"Q. And for Southern Colored Printing?

"A. They do the printing, yes, sir. Just as International does the printing for King, and just as Greater Buffalo does the printing for NEA.

"That's all been cleared in the record.

"Q. You are out to get all the printing business for
732 Southern Colored Printing that you can get, isn't that so?

"A. Legitimately, yes."

(A short recess was taken.)

"Q. You don't care whether it comes from International Color Printing or where it comes from, do you?

"A. No, that is no consideration of mine.

"Q. All the business that you have obtained since April 1st did come from International Color Printing, did it not?

"A. No, sir, not all the business, sir.

"Q. Which one didn't?

"A. I obtained contracts from the two papers in Greensboro, North Carolina in the latter part of November or early December of 1961, which theretofore had been printed by Eastern Color at Waterbury, Connecticut.

"Q. You took all the business they had, didn't you?

"A. I don't know of any other customer they have in the southeast.

"Q. You felt entirely uninhibited morally or otherwise from taking every dollar of business that this outfit had that
733 you just mentioned; isn't that so?

"Mr. LAYTON: Come on, now.

"Mr. RAICHLE: I press the question.

"Mr. FELDMAN: I object to that question, how he felt and so forth. I think that it is improper.

"Q. You took it, didn't you?

"A. Yes, sir.

"Q. You made no apologies for it?

"A. No, sir, I made no apologies.

"Mr. LAYTON: Would apologies make you feel any better?

"Mr. RAICHLE: Don't be so captious.

"Mr. LAYTON: I think this line of questioning is amusing.

"Mr. RAICHLE: I owe you a very profound apology but let's continue.

"Q. In these places where you say you have bids pending, who is your competition?

"A. I know that one of them is presently printed by International Color, another is presently printed by Greater Buffalo, and another doesn't have a comic supplement at present and is thinking of adding one.

734 "Q. Is it your testimony here under oath that in the solicitations that you have mentioned and in connection with the business which you have gotten, that you never once mentioned the Court's order or the fact that these defendants were under restraint?

"Mr. LAYTON: There has not been one question previously to establish that kind of testimony. How can you ask him whether it has been his previous testimony.

"Mr. RAICHLE: Stop quarreling about everything. If you want to coach him, coach him.

"Mr. LAYTON: You have asked this witness whether it has been his testimony that not once did he mention X or Y. You have not, prior to this time, asked him whether he did mention it.

"Q. You did mention it, didn't you?

"Mr. LAYTON: I will object to the form of the question.

"Q. Did you mention it?

"A. Did I mention what?

"Q. The fact that your competitors were under re-
735 straint, yes or no.

"A. You mentioned it and you agreed that I understand that to be the case.

"Q. In the solicitation of the business that you had told us about these various accounts, did you mention in the course of such solicitation the fact that your competitors were under restraint? Yes or no, please.

"Mr. LAYTON: Do you want the question read back?

"Mr. RAICHLE: There are only so many time outs after the two minute warning, you know.

"Mr. LAYTON: We haven't taken a time out yet.

"Mr. RAICHLE: I will take time out if you want to talk with him.

"The WITNESS: There is no need to talk with him. I want you to clarify your question before I answer it. Are you referring to these contracts that have been put in evidence here?"

736 "Q. I will take as long as you want. In the course of solicitation of business since April 1961, including those which have been specifically mentioned in the course of your testimony, did you mention the fact, discuss with the persons with whom you were soliciting business from, the fact that your competitors were under restraint by the court order?"

"A. I think I probably did in some cases.

"Q. Is it your best recollection that you did?"

"A. The reason I hesitate is that I recollect one or two cases where the case was discussed but I don't know when that was, whether it was before April 1, 1961.

"Q. Were you discussing the fact that they were going to be under restraint before they were?"

"A. No, sir. If I were discussing anything, it was this suit that the Government has against the defendant for the monopolistic practices and all that. You are familiar with the suit.

"Q. Did you discuss with any customer or potential customer, subsequent to April 1, 1961, the fact that your competitors, or certain of them, were under restraint?"

"A. I don't remember any specific conversation.

"Q. You say you did not?"

"A. I won't say I did not. I say I don't remember.

"Mr. LAYTON: Could you please read the question?"

"(Question was read back by the reporter.)

737 "A. I discussed it, I am sure, with customers of mine who are also stockholders of Atlantic. For instance, I had a letter from Carl Jones of the Johnson City, Tennessee Press Chronicle, in which he said 'I read about this, but what does it mean?'

"I wrote him a letter and told him my understanding of what it meant.

"I subsequently seen two or three or four of my stockholders who are also customers, and I have explained it to them
738 at their request.

"Q. Haven't you told various persons that the Sylacauga plant would never open?"

"A. No, sir. That would be the most absurd statement.

"Q. Haven't you told them it would never open under our ownership?"

"A. No, sir. That would be making a certain statement as to the decision of the Court. I'd never do that.

"Q. Did the fact of this Court order of June 22, 1962, help you in obtaining any of this business?

"A. No, sir.

"Q. You would have obtained it anyway, would you?

"A. As I said a while ago, the main thing with quality and service being generally equal, the main thing is cost, transportation and your quotation for the printing.

"Q. Do you fear the competition of the Sylacauga plant in printing?

"A. In the context of —

"Q. Won't you answer that directly?

"A. Sir?

"Q. Won't you answer that directly?

739 "A. Well, no, I can't say that I fear it just like that because in some ways I fear it, in other ways I don't fear it.

"Q. You believe in free enterprise, don't you?

"A. I certainly do.

"Q. You believe in competition?

"A. That's right, as long as it is fair and there is competition.

"Q. You have no objection to competing with the plant at Sylacauga or anywhere else for printing as long as there are no predatory practices, tie-ins or matters of that kind?

"A. I think that is substantially correct, sir.

"Q. The Greater Buffalo Press, did they ever take a dollar of business away from you?

"A. No, sir, only their agents, one of their agents.

"Q. By that you mean King Features?

"A. King Features took a customer away from me.

"Q. What customer?

"A. The Sarasota, Florida News.

"Q. When?

"A. Late summer, early fall.

"Q. Of what year?

"A. This year.

740 "Q. How much did that amount to in fours per week
"A. I think their circulation was around 11,000 and it was an eight-page supplement, twice 11,000 would be 22,000 fours, approximately.

"Q. Minimal, then?

"A. It was a small run, but consequential to a small operation like mine.

"Q. Your recollection doesn't serve you to tell or name any other instance when any defendant took any business away from you, does it?

"A. When I——

"Q. Yes or no, please.

"A. You want the instance.

"Mr. LAYTON: He is asking you if you can remember any.

"The WITNESS: Yes, I can remember one.

"Q. Which one?

"A. In addition to that.

741 "Q. Where was that?

"A. That was sometime ago.

"Q. How many years ago?

"A. I would guess around 1957 or perhaps 1956. It's around that area where West Palm Beach Post Times was printed at Southern Color Print. It is one of the Perry newspapers of Florida.

"They decided to have the same or approximately the same comic supplement for all of their papers. The others of which were printed under contracts with NEA and at Buffalo or Dunkirk. They cancelled that agreement so West Palm Beach could be a part of their general arrangement of the other Perry papers.

"That is the only other one, sir, that I remember.

"Q. Do you sell from a price list?

"A. No, sir, I don't sell from a price list.

"Q. Does Southern Colorprinting sell from a price list?

"A. They don't sell at all except to me."

742 "Mr. RAICHLE: I might make the observation, your Honor, one of the things complained about, as I understand it, is that International Color prints largely for King Features, and here we have this question and answer:

"Q. Does Southern Color Printing sell from a price list?

"A. They don't sell at all except to me.

"Q. In their behalf, is their printing sold from a price list?

"A. No, sir. Prices vary according to the cost of the job.

"Q. That is traditional in this business, is it?

"A. Yes, I think so, although at my last deposition I recall that your colleague, Mr. Moore, sought to show that you had a price list, and offered to show it, and he showed a contract Greater Buffalo had made with the New Orleans Times Pica-

yune which broke down various elements of the cost but made no mention of net, which would force anyone to assume that they were printing at no profit at all, or the net was tacked on to each of these items that were broken down to make
 743 the price New Orleans was paying.

"That is the only knowledge I have of anybody claiming to sell from a price list.

"A price list, sir, is usually a list that a salesman has a bag of this quality beans is so much and so on. I have never seen or heard of any price list like that in the comic supplement printing business.

"Q. You do not object to competing with a plant at Sylacauga, Alabama, do you?

"A. I don't object to going after business. I do object to the creation of a business that if it wishes to, can go to my customers and make propositions to them of whatever nature, even if it caused a loss, in order to eliminate my competition.

"Q. Did you do that when you eliminated that other competitor?

"A. I haven't eliminated that other competitor. I guess you are referring to Eastern.

"Q. Yes.

"A. No, sir, I just eliminated that business in one city, Greensboro, North Carolina. They still print for a great number in their natural territory which is New England.

744 "Q. The only printing which is competitive with yours is that which you took, isn't that correct?

"A. That is correct, yes.

"Q. When you were talking about the market, you included the newspapers who print their own?

"A. No, I don't include that. I don't regard that as part of the market. All this is the same sort of thing that we went over three or four days a year and a half ago.

"Q. Is that irksome to you?

"A. Yes, sir, it is harassing. We are called here not long after a major operation, to give testimony. I am positively
 745 willing to cooperate, as long as my health permits, to give you new testimony that is required, but I think it is rather absurd to harp back to matters which are already in the record because of the deposition which I gave more than a year and a half ago and which I understand that Greater Buffalo did not see fit to turn into the Court.

"Q. You gave me a good idea, thank you.
You have read your deposition, haven't you?

"A. Yes, sir.

"Q. Did you, in reading it and now that you have read it, become aware of any part of it that you want to change, add to, amend, alter in any way?

"A. No, sir.

"Q. You stand on what you said before?

"A. Yes, sir.

"Q. Let's get down to the visit to Mr. Feldman and these projections of ours which you and Mr. Smith were discussing. By the way, did you and Smith go there together?

"A. No, we were on separate airplanes. I went in the morning and he went later in the day.

"Q. You were discussing the matter with him before
746 you left?

"A. He had mentioned that he had the figures and he was looking at them.

"Q. Did he show them, that he had them down there in is plant?

"A. Yes, and he was looking at them.

"Q. What day was this?

"A. It was during that time I was down there. I don't remember what day it was, but it was sometime around between the 15th and 22nd.

"Q. Did he show you our projections down there?

"A. Did he show them to me?

"Q. Yes.

"A. I think he did, yes, sir.

"Q. When you saw them at the Department of Justice, you saw them for the second time, or at least it was not the first time?

"A. Thinking about it, I may not have seen them at the Department of Justice. If I saw them, it was for the second time.

"Q. The time that you now recall is the time when you and Mr. Smith were discussing them down there at the Southern Colorprinting?

"A. He mentioned them to me.

"Q. What did he say?

747 "A. He said he was looking at them, checking to see how they looked from the standpoint of various costs.

"Q. Did he make any comment to anyone about the various costs?

"A. I think at the time he talked to me, he was figuring and checking on it. I don't think he reached any conclusions.

"Q. Did he express any conclusions to you?

"A. I remember one thing he mentioned because it was of particular interest to me, that there was a very large cost there for the sale of comic supplements. I was wondering at the time why that cost was included in a projection that had to do with their operating the plant with these customers that were allowed under the order and without any more papers. I couldn't understand why there would be a large sales cost. That is one thing.

"Q. Do you remember what the sales expense contained in the projection?

"A. It was \$20,000, \$25,000 a year.

"Q. Wasn't it \$15,000 in each of the two columns?

"Mr. LAYTON: Would you like to refresh his recollection?

748 "Mr. RAICHILE: Sure, he can look at it."

(Document handed to the witness.)

"Q. Do you know about where your left thumb is?

"A. It says here sales expenses 15,000, travel expenses 10,000, administrative salaries 20,000. The sales would be the sales expense and the travel expense which would come to 25,000.

"Q. Does Southern Color printing have your sales services and your expenses for an aggregate less than that?

"A. Yes, sir.

"Q. Did you say yes, sir?

"A. I said you, sir; an aggregate less than that?

"Q. What is that?

"A. I think that is a private matter. Do I have to answer that?

"Mr. LAYTON: No.

"Q. I will press the question.

"A. I decline to answer, sir.

"Mr. LAYTON: I will direct him not to answer.

749 "Q. What other items did Mr. Smith discuss with you?

"A. He was talking something about labor cost and so on, but it didn't register much with me because I just don't have that sort of thing in my mind. I do remember him mentioning labor cost.

"Q. You have been in this business how long?

"A. Define that. How long have I been in the comic supplement business?

"Q. Yes.

"A. I have been handling comic supplement printing sales for twenty-five, thirty years, I suppose.

"Q. To fix a price, you have to know something about costs, don't you?

"A. No, you are given the price by the printer in one case or by your superior in another case, and you quote that price.

"Q. Do you know a single figure in either of those two columns on our projection there, or the projections, which is different than what you think it ought to be?

"A. No, sir, I haven't examined this. The only thing I see—

"Q. Take a look at it now, if you will be good enough.

750 "A. Employee benefits, I don't know anything about what your employee benefits are, or what your payroll is, or what your amusement is, or what your supplies or what your depreciation, the power would cost, or the real estate that you would buy, or the miscellaneous. I don't know about that.

"Q. Excuse me for interrupting. Do you know what any one of those items ought to be?

"A. No, sir.

"Q. Do you have an opinion with respect to any one of those items?

"A. If I got down and did a lot of figuring, I might be able to figure out what would be a fair estimation, but I haven't, as I say, I haven't studied this and the only thing about it that sticks out to me is the sales expense and travel expense. I am a little interested in administrative salary because that seems rather large, telephone and telegraph, broke that down into months. Even then I think, it would be a little on the large side. Interest, I don't know how much you owe and how much you have to pay. Miscellaneous, that is a minor item, I don't know. It all gets down to the fact that without a good
751 deal of studying and figuring, I would not be able to contest any of these items if you wanted me to contest them or agree to any of them.

"Q. Let me put it this way: Is there any category of costs, element of cost improperly listed there so far as being properly included as an element of cost?

"Mr. LAYTON: You mean the element itself?

"Mr. RAICHLE: Yes.

"A. I would not be prepared to answer that without a careful study of it, which I haven't had time to make.

"Q. After having discussed it with Mr. Smith, seen it with Mr. Smith, now seen it here, and by 'it' I mean this exhibit with these two columns, can you point to any items of cost which is improperly there?

"A. I would question the item for sales expense and travel expense.

"Q. I am not discussing the amounts now.

"A. The inclusion of—if you are not discussing the amounts, I can't answer the question. Even with a plant that cannot go out and solicit new business, you would probably have some sales expense just going around and telling your customers that you were going to move them in there and that
752 sort of thing, but I don't think it would be anything like \$10,000 a year and I don't think it would require salesmen for \$15,000 a year. I think Mr. Koessler or Mr. Clinton can get on the telephone and handle this thing or maybe make a round of the customers.

"Q. That suggests to me that you probably handled some of these solicitations by telephone, don't you?

"A. Yes, sir, I have talked on the telephone to prospects.

"Q. Your solicitation is not measured by the number of trips you made?

"A. Largely because these telephone calls are usually just, 'What did you decide about the proposition I made?'

"Q. A follow-up call?

"A. That's right, or 'Is your situation such now that you can consider a proposition from us?' That sort of thing.

"Q. It is all part of the solicitation?

"A. Like any business. Telephone call—just as personal calls.

"Q. You can't help us then or harm us so far as these projections are concerned, can you?

753 "A. No.

"Mr. LAYTON: I think his testimony speaks for itself.

"Q. You know of no item improperly included?

"A. None, except what I pointed out about the sales expense which I questioned.

"Q. But you don't question any other item?

"A. No, sir, I am not in a position to question it.

"Mr. LAYTON: I think his testimony has been that he doesn't have the expertise or the opportunity to express an opinion.

"Mr. RAICHLER: Opportunity?

"Mr. LAYTON: He said that he has not had an opportunity to sit down and figure and examine.

"Mr. RAICHLER: You said he didn't have the opportunity to express an opinion.

"Mr. LAYTON: No, I didn't mean to express an opinion. An opportunity to examine in order to express an opinion. An opportunity to examine in order to express an opinion.

"Q. Did you read these notes?"

754 Mr. RAICHLER: It refers to the note as part of Exhibit A.

"A. No.

755 "Q. Did Mr. Smith discuss the notes with you?

"A. No, sir.

"Q. How did Smith get these projections of ours?

"Q. Mr. LAYTON: Wouldn't it be better to ask Mr. Smith that?

"Q. Do you know; did he say?

"A. I don't remember that he ever said. I felt, of course, that he had gotten them—would have had to have gotten them from Mr. Koessler or Mr. Feldman, and I would doubt very much that Mr. Koessler would send them to him. I assume he must have gotten them from Mr. Feldman.

"Q. Did he stay in Washington after you left?

"A. No, we went on the same plane.

"Q. Did he have these projections with him?

"A. I'm not sure of that, sir.

"Q. Who initiated the visit to the Department of Justice? Did you call the Department and say you wanted to come or did someone there ask you to come?

"A. No, I called the Department and asked them did they have copies of my deposition which I did not have with me down there. They said yes. I said, 'If I came up there,

756 could I take a look at them?' They said 'Of course.'

When I got there, I went to Mr. Feldman's office and he handed me the deposition and took me to the library and left me.

"Q. You were with Mr. Feldman this morning, weren't you?

"A. Yes, sir.

"Q. Going over your testimony?

"A. We discussed the testimony, yes, sir.

"Q. What part of it?

"A. Various things.

"Q. Did you discuss these figures?

"A. No, sir.

"Q. Or any of them?

"A. No, sir.

"Q. Did you discuss the business which you had acquired?

"A. Yes.

"Q. Which you had taken from International Color Printing?

"A. That was among—I mean, we didn't discuss them individually but we discussed the fact that I did take business away—that I did acquire business.

757 "Q. Was anything said about these politicians who were pleading for the people up there in that depressed area?

"A. No, sir.

"Mr. LAYTON: If you would care to make a statement on their behalf now, go right ahead.

"Mr. RAICHLE: I think they have been quite active.

"Q. Prior to the time you called Mr. Feldman to go up and read your deposition, as you say, when had you talked to him last?

"A. On the way to Newport News, I was driving through Washington—as a matter of fact, I spent a night there and the next morning I saw the Washington Post and Washington Star about Hall Features.

"Q. And about the printing, too, didn't you?

"A. No, I didn't talk to them about printing.

"Q. Who was going to print them if you got the business?

"A. We are talking about little panels and little daily column strips. That had nothing to do with printing. Then I took a taxi by the Justice Department and I caught Mr. Feldman just as he was going out and said hello. I said, 'Looks
758 like there might be another deposition going on in New York.' He said, 'Well, I can't tell you anything about that. The thing to do is talk to your lawyer about that.' I said, 'I am in constant touch with my lawyer about that.' That was about all we discussed.

"Q. Next prior to that, when did you have your last talk to anybody connected with the Department of Justice?

"A. That was some months ago.

"Q. When?

"A. I may have talked to him in the early summer. I'm not sure of this. I may have called him and asked him what the status of the case is, 'How are things coming along, what's happening?'

"Q. Well, did you?

"A. I am not sure, sir, but I think I did. I wouldn't swear to it.

"Q. Did you ever make a written statement for the Department of Justice?

"A. I made an affidavit.

"Q. Other than the affidavit which is used in the motion papers, did you ever make a written statement?

"Mr. LAYTON: At any time?

750 "Mr. RAICHLE: Yes.

"Q. In connection with this matter?

"A. I have written Mr. Feldman or Mr. Carlson letters about various things but I never made a statement for them.

"Q. Never made a written statement?

"A. Not that I recall, sir, other than the affidavit.

"Mr. RAICHLE: What is your pleasure about time?

"Mr. LAYTON: Off the record."

(Discussion off the record.)

"Mr. LAYTON: We started at approximately 11 o'clock this morning and I suggest that we continue the deposition until about 1 o'clock at which time we can take a comfortable luncheon recess and subject to Mr. Hornady's health, come back shall we say at 2:30, and continue for a while then in the hope that possibly the direct examination may be concluded today, and that tomorrow the cross-examination will

760 be concluded.

"Q. When you had been soliciting business, you knew King's prices, didn't you?

"A. Not in recent years because I'd say their prices have changed, but I did from my private records know when I left them what their prices were, from some of these papers. But their prices had been changed in many, many instances.

"Q. You found that to be helpful, or at least to some advantage in soliciting business?

"A. Yes. It is always good for a salesman to know what he is up against.

"Q. Especially when bidding?

"A. Yes, sir.

"Q. In terms of weekly fours—I have trouble with the expression but it seems to be what we are using here—what was the volume at Southern Colorprinting when you went with them?

"Mr. LAYTON: Can you give us a date on that?

"Q. 1955, 1956.

"A. Early 1956, sir.

"Q. All right, that is the date.

"A. We were printing, I think, Southern Colorprint was printing, I think the figure is 243,000, eight page supplements for the southeastern group. They were printing 761 West Palm Beach which circulation I just don't remember.

"Q. Could you translate that into weekly fours for me?

"A. I haven't added these up. They were printing their own supplements which would I suppose come to around 50,000. I believe they had a sixteen page supplement. Let's guess that West Palm Beach was 40,000, eight page units. So we will translate that into around 763,000, fours as near as I can estimate what they were printing at that time.

"Q. Under your leadership stewardship or with your help, call it what you will, the business has grown ever since?

"A. Call it what you will, since I have worked for them they have increased their volume of business, yes, sir. That was the purpose of them hiring me to work for them.

"Q. Your special ability to sell the product?

"A. I have a great deal of experience.

"Q. That makes for the ability to sell the product, right?

"A. Yes, sir. I will grant that.

"Q. They had confidence in you and you had confidence in yourself, you went out and did a job, right? 762

"A. Yes, I went out and got certain business for them.

"Q. You say they had 700,000?

"A. It looks like around 763,000.

"Q. And now they are up to what, two million seven, something like that?

"A. No.

"Mr. LAYTON: Let's get the figure.

"The WITNESS: We added these up a little while ago.

"Mr. FELDMAN: 1,068,000. That is, including Norfolk.

"The WITNESS: It doesn't include Greensboro because it runs higher than that. What's that figure over there?

"Mr. FELDMAN: 1,068,000.

"The WITNESS: That makes around 1,460,000."

Mr. RAICHLE: I might say to Your Honor, these all work out here.

"By Mr. RAICHLE:

"Q. You mean the increase?

"A. No, that is the total.

"Q. What are you talking about? It's a total of almost two million, eight?

"A. Yes, that is the increase.

"Q. Take your time.

763 "A. It's around three million, the total amount, or it will be when Norfolk starts.

"Mr. FELDMAN: What was that figure?

"A. Around three million when Norfolk starts.

"Q. Around 3,150,000?

"A. Yes, sir, a little over three million.

"Q. From 700,000?

"A. From 763,000, yes, sir.

"Q. More than four times, right? Four times seven is twenty-eight?

"A. Yes.

"Q. What part of that increase do you attribute to your sales acumen, and what part do you attribute, if any, to the restraints byway of injunction that the defendants labor under?

"A. I attribute none of it to any so-called restraints. I do not attribute it entirely to any acumen. I attribute it to my acumen and salesmanship, plus advantages of transportation and our willingness to take less profit than some of the other color printers and agents had been taking.

"Q. If you don't attribute any part of it to the restraints, you would say that you would have had the same growth without the restraints?

764 "A. I think that, sir, except that I could possibly have lost considerable business.

"Q. Do you want these restraints continued?

"Mr. LAYTON: Do you want his subjective feelings on this?

"Mr. RAICHLE: Yes.

"A. If those restraints were lifted, and unfair advantage, such as selling below cost, could be surmised—I mean, the lack of unfair advantage being surmised, I would have no objection. The thing that bothers me, if Sylacauga is operating here on

one side, while Wilkes Barre up here on the other, and this is a little outfit furnishing a little competition in the southeast, they would have the power, lacking any restraints, to knock me out of the business.

"Q. Assume that the competition of the Sylacauga plant was the same, in the hands of the present defendants as it would be in the hands of some independent who might buy it and operate it, or in the hands of someone else who would build a plant there and operate it, would you have any objection?

"Mr. LAYTON: You are posing a hypothetical question to the witness.

"The WITNESS: I would like for it to be reread, because there were several 'ifs' in there.

"(The pending question was read back by the reporter.)

"A. Couldn't you frame that question or series of questions in a more clarified manner, sir?

"Q. In the absence of predatory, illegal practices, you wouldn't mind the competition of a plant in Sylacauga, would you?

"A. No, sir.

"Mr. LAYTON: He has answered that before.

"Q. What is the capacity of your Southern Color Printing in terms of weekly fours?

"A. I think we could probably print another million or million and a half. I am not sure of that.

"Q. That is your best judgment?

"A. I must apologize for not having a mind for figures. I just don't retain them in my mind.

"Q. Do you mean that a man who gives a price every day doesn't have a mind for figures?

"A. I have a note of the price I am going to quote.

"Q. So that you won't forget it?

"A. Yes, that is right. I refer to it from notes.

"Mr. LAYTON: Are you getting at your previous question in another way, or are you withdrawing that previous question?

"Mr. RAICHLE: What?

"Mr. LAYTON: I am asking whether you are rephrasing your hypothetical question or whether you are withdrawing it?

Mr. RAICHLE: I guess it got lost in the shuffle, like so many of them.

"By Mr. RAICHLE:

"Q. Have you made any computation on which the estimate of the aggregate loss of savings to the newspapers in this area covered by the Court's order is a result of the inability to get the transportation saving?

"Mr. LAYTON: May I have that question read back."

(The pending question was read back by the reporter.)

"A. I don't understand the question.

"Mr. LAYTON: I am afraid I don't understand that question.

"Mr. RAICHLE: Just be quiet and I will get the ques-
767 tion to you.

"Q. Mr. Hornady, if the plant at Sylacauga were opened and servicing newspapers, customers, printing customers in this area, there would be substantial freight savings; isn't that true?

"A. There would be substantial freight savings.

"Q. Transportation?

"A. Transportation savings.

"Q. Yes?

"A. Yes.

"Q. Do you know how much in terms of dollars the aggregate of such savings would be?

"A. No, sir, I don't.

"Q. Have you ever tried to find out?

"A. There were some papers entered in Washington by one of the defendants that purported to show those savings, but I have forgotten what they were.

"Q. Where did you see those papers?

"A. During—they became a matter of public record when they were introduced in that Buffalo hearing.

"Q. You looked at them?

"A. Yes, sir.

"Q. Did you have any quarrel with the figures?

"A. No, sir, I didn't quarrel with them.

768 "Q. So that the savings represented by the defendants would, in fact, be effected, according to your opinion; right?

"A. The savings—

"Q. Which you saw in the paper which you are referring to would, in fact, be accomplished; isn't that so?

"A. I didn't say they would not. I did not say they would. I had no opinion on that. I made no tabulation.

"Q. You know that savings would be substantial?

"A. There would be substantial savings. Who would enjoy those savings, I don't know.

"Q. Assume that they would be enjoyed by the newspapers in the South, the consumers. Don't you think they are entitled to that?

"A. On that assumption, they would be substantial, sir.

"Q. But under this restraint, those savings are denied to those newspapers; isn't that so?

"A. Under the restraint, the plant was not permitted to open until sometime in June, and they have not seen fit to open since then. If they had seen fit to open at the time the order was entered, those savings would now be enjoyed by those
769 newspapers you speak of, provided those newspapers were given the benefit of those savings.

"Q. You are talking about four or five particular runs. I am speaking generally. If the plant would open and could service newspapers in the area referred to in the order, there would be substantial savings to the consumer; isn't that true?

"A. There would be substantial savings. I won't go any further, because I —

"Q. Assume they are passed on to the consumer.

"A. In that case, there would be savings.

"Q. Yes; from the transportation?

"A. Yes, sir.

"Q. Won't you agree with me that it is economically unsound to continue this order of things?

"Mr. LAYTON: I will object to that question. If you want an opinion, why don't you take your own? I think that is all you are really saying.

Mr. RAICHLE: I want to see what he thinks about it.

"Mr. LAYTON: Read the question back to the witness.

770 "(The pending question was read back by the reporter.)

"The WITNESS: That is economically unsound.

"Mr. FELDMAN: To whom is it economically unsound?

"By Mr. RAICHLE:

"Q. From the standpoint of the consumer?

"Mr. LAYTON: By the 'consumer', do you mean —

"Q. The newspapers who pay for it.

"A. Taking your assumption that all of these savings and transportation would be passed on to the newspapers, then it would be a good thing for them if the plant were opened.

"Q. Don't you know that the estimated savings would be in excess of \$160,000?

"A. No, sir, not of my own knowledge. I don't dispute it. I just don't know.

"Mr. LAYTON: Can I suggest at this point that we break?

"Mr. RAICHLE: Sure.

"(Whereupon, at 1:00 p.m., the deposition was adjourned for a luncheon recess.)

AFTERNOON SESSION—2:30 P.M.

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"JACK R. HORNADY, Examination continued.

"By Mr. RAICHLE:

"Q. The seven hundred and some thousand fours that Southern Colored Printing was printing at the time you went there had all been taken from International Color, had it not?

"A. Yes. A group called the Southeastern Group, with twelve or thirteen papers, had gone in together, to have the same supplement, advertising, and so on, that had formerly been printed by International on the King Features contract, and two or three years prior to my going to Atlantic Features that business was taken away from King and International by Southern Color Printing, approximately 243,000 eight-page units.

"Q. Historically, the Southern Color Printing business has been business taken away from others, notably and principally, International Color Printing?

"A. With minor exceptions. The Charlotte News started printing their own. That does amount to 70,000 supplements—it isn't too minor, where I am concerned. Then, of course, Newport News, at one time, was printed by King before they built their plant.

"Q. What I am getting at is—and I think the figures show it—is this, that historically and over the years, Southern Color Printing built its business by taking printing that had previously been done by International Color Printing, except for these minor exceptions, or these exceptions, you have mentioned?

"A. Yes, except for the exceptions.

"Q. On the other side of the coin, International Color Printing took nothing, except those minimal instances that you mentioned, from Southern Color Printing?

"A. Sarasota, and we have the Palm Beach, as far as I know.

"Q. Over the years, there was very little to complain about in the way of loss of business on the part of Southern Color Printing?

"Mr. LAYTON: Do you want an opinion in answer to that question?

"Mr. RAICHLE: I am asking him a question.

"Q. That is right, isn't it?

"A. Repeat the question.

773 "Q. There was very little to complain about in the way of loss of business to International Color Printing, insofar as Southern Color Printing was concerned?

"Mr. LAYTON: On behalf of whom are you asking?

"Mr. RAICHLE: I said on the part of Southern Color Printing.

"Mr. LAYTON: You are asking—who are you asking?

"Mr. RAICHLE: Listen to the question and stop talking so much and you would be better informed—not wiser, just better informed.

"Mr. LAYTON: I am just trying to clarify the question.

"Mr. RAICHLE: No, you are trying to filibuster.

"Mr. LAYTON: I think the record is eminently clear as to who is conducting a filibuster. I want the question clear so that the witness can understand it.

"Mr. RAICHLE: Let me tell you something when you get through.

"Mr. LAYTON: I am through.

774 "Mr. RAICHLE: In the first place, you have no standing to object. You are not a party to this proceeding. You are interrupting. As a matter of fact, you are an interloper.

"Mr. LAYTON: That is just fine. I am glad that the record is being made clear. If I don't have any standing, this witness is my witness.

"Mr. RAICHLE: We will discontinue our examination. I don't want to be your guest in your room, with you interrupting the examination.

"Mr. LAYTON: This is your examination, sir. You may conduct it, you may terminate it, you may do everything you want.

"Mr. RAICHLE: I will proceed against the witness for his contempt and his perjury.

"The WITNESS: Make yourself clear about that, please, sir.

"Mr. RAICHLE: Exactly what I said.

"The WITNESS: I have been aware of your extravagant and wild use of the English language, but that is very wild and very extravagant and very emotional. You have no such grounds whatever, to make that statement."

The COURT: I think Mr. Raichle, I will recess until two, at this time.

(Thereupon a recess was taken at 12.30 p.m.)

(Proceedings resumed pursuant to recess, commencing at 2:10 p.m.)

Mr. RAICHLE: In conformity with the suggestion made in Chambers, I will omit certain portions of this deposition from my immediate reading, but with the understanding that the whole deposition is in evidence. There are some portions I want to call particularly to your Honor's attention, with your permission, at this time, because I think they bear on what may be subsequently developed. I understand Mr. Feldman has a witness from out of town whom he would like to swear out of turn, and that is all right.

The COURT: Take these questions and answers which Mr. Raichle wants emphasized and then copy the whole thing from beginning to end into the record in addition to the particular ones that Mr. Raichle will emphasize.

Mr. RAICHLE: This is Page 93.

"Q. You have no basis for complaint, have you?"

"A. No, not about what they had taken away from us."

Mr. RAICHLE: That could be stipulated to mean Greater Buffalo Press and International Color Print.

Mr. FELDMAN: Wait a minute—

Mr. RAICHLE: The context shows it, when His Honor reads it—

Mr. FELDMAN: Why not let it stand on the context.

"Q. Just one, single complaint to make about International Color Printing or Greater Buffalo Press since you left King Features and went with Southern Colorprinting? Yes or no, please."

Mr. RAICHLE: Then there was some colloquy and the question was read back.

"A. I had a number of complaints regarding the activities of agents of Greater Buffalo Press and International Color Printing.

"Q. Do you mean King Features?"

"A. King Features, NEA.

"Q. Can you tell me one thing that Greater Buffalo Press did or International Color Printing did or Dixie Color Printing did of which you complained?

"A. Nothing, except what they did, sir.

"Q. By 'the agent', let's particularize, you mean King Features?

"A. King Features and NEA.

"Q. When you say 'the agent', you have previously told me you stood on the testimony you gave last time and the last time you said that International Color Printing was a subcontractor of King Features, didn't you?

"A. I may have. I don't know.

"Q. Was that the truth?

"A. I remember saying at the time that when an organization or a representative goes into see somebody to sell him something——"

Mr. RAICHLE: Page 95, Line 15:

779 "Q. I am asking if what you said before on the subject is the truth?

"A. I would say that it was—International was a subcontractor of King Features Syndicate."

Mr. RAICHLE: Farther down on page 95:

"Q. Save for anything that King Features might have done or the NEA might have done, can you tell me one, single complaint that you have of the conduct or any act or deed on the part of International Color Printing or Greater Buffalo Press?

"A. That is a long period of time.

"Q. Since you went with that Southern Colorprinting?

"A. That's been nearly seven years.

"Q. Tell me, what is the complaint?

"A. I've got a perfect right to take time to answer. I want to tell the truth. I've got to have time to recollect, sir.

"Q. Tell me the complaint, what is it?

"A. Wouldn't it be a good idea for you to calm down and let's conduct this examination the way you did this morning.

"Q. Don't lecture me.

"A. I will lecture you if you lecture me.

780 "Q. As you sit there now, you have not had time enough to recollect any complaint which you have to make against these two companies?

"A. Because you have constantly been interrupting my reflection.

"Q. From your interrupted reflection, in the quiet and peace of the consolation of your counsel sitting there to help you, you can tell me.

"A. Give me a little uninterrupted to tell you.

"Q. All right.

"A. I was not conscious of my own knowledge, prior to the filing of this case, that Greater Buffalo Press was engaged in any activities that were hurtful to me and at the same time unfair."

Mr. RAICHLE: Line 13:

"Q. —can you tell me a single act or deed on the part of the Greater Buffalo Press, International Color Printing or Dixie Color Printing, of which you complaint or which you would even criticize?

"A. No, I don't recall anything, sir."

Mr. RAICHLE: I want to ask about the restraints here:

"Q. Prior to the time that the government sought this restraint against these defendants, did you discuss with the Department of Justice or any representative of the Department of Justice the matter of obtaining such a restraint?

"A. Would you repeat the question, please?

"(The pending question was read by the reporter.)

"A. By restraint, I assume you mean not permitting the opening of the Sylacauga plant? No, sir, I did not discuss that.

"Q. Did you ask for such a restraint?

"A. No, sir.

"Q. Do you ask for it now?

"A. No, sir."

Mr. RAICHLE: Line 18:

"Q. If the Sylacauga plant did not sell below cost and competed fairly with you on that basis, you would have no objection to their operation, would you?

"A. As I said a while ago, I am in no position to object or not object. If you ask me would I like it, naturally, anybody has less competition, but they do not expect it, naturally.

"Q. In other words, you can think of no basis on which you are entitled to freedom of competition?

"A. With the reservation about the predatory—possible predatory action.

"Q. Assume fair, honest, decent, good faith, hard competition, do you know of any reason you are entitled to be protected against that?

"A. With that assumption I don't know of any reason."

Mr. RAICHLER: Page 100:

"Q. You have had months, hours on end with Mr. Feldman and the rest to think of them, haven't you?

"A. I have had considerable time."

Mr. RAICHLER: "Them" refers to complaints.

"Q. And that is the best or the worst, depending on the point of view, that you can come up with on that subject, is that right?

"A. I have stated what I have."

Mr. RAICHLER: Over on the bottom of page 101, line 22:

"Q. Your product and Koessler's product you say are the same?

"A. In some cases ours are better; in some cases his are probably better. I don't know. They look about the same. They are not enough different to make the reader of a newspaper or ordinarily the publisher of a newspaper to see any great difference in them.

"Q. They are competitive?

"A. That's right.

"Q. Competitive in point of quality, competitive in point of price, competitive in point of service?

"A. Competitive in quality and service.. In some cases I can give better service than Mr. Koessler because I am closer to them. In some cases he doubtless can do the same. I do think that because of the fact that I don't print nearly as many papers as he does, that I can probably give a little more individual service than he can. All of that is not of great significance. As to prices, they are generally competitive."

Mr. RAICHLER: Skipping to line 24:

"Q. That gets back to this transportation saving?

"A. Yes.

"Q. The newspapers in the South are presently deprived of the saving that would result from doing business with the Sylacauga plant, is that right?

"A. If they—

"Q. Is that right?

"A. I am trying to answer. If they are to be given the benefit of those savings, they are being deprived of those savings. They were deprived of them up to the time of the order. They subsequently have been deprived of them because there had been no action by Greater Buffalo or Dixie Color on the order."

Mr. RAICHLE: Page 104:

"Q. If the Sylacauga plant operated, it would also have to pass on the saving in the same way to be competitive with you, isn't that right, as a practical workaday fact of life?

"A. It would depend on the location. If, for instance, it had a transportation cost from Birmingham of, let's say, fifty cents per one hundred weight, whereas from Wilkes Barre it was \$1.25 per hundred weight, there is a 75 cent saving. If he let Birmingham get the full benefit of that seventy-five cents,

785 then Birmingham would, of course, save that sum out of that cost. But you say he would have to do that in order to protect his transportation rates as against what I could get. Well, suppose mine were one dollar from Newport News and they would save seventy-five cents, I would still be higher than he is, and so there would be no competitive compulsion on the part of him giving me an order. That all depends—it is rather involved—but that all depends on the degree of savings, the amount of savings, the distances involved, and so forth."

Mr. RAICHLE: Page 106, line 11:

"Q. Mr. Smith is walking around with our figures down there and conferring with you about them.

"A. He never asked you for those figures.

"Q. You gave them to him. Anyway, it is a competitive advantage to have them, isn't it?

"A. Oh, yes, competitive advantage."

Mr. RAICHLE: Over on page 107:

"Q. Are you the agent for Southern Color or is Southern Color subcontractors for you, which is it?

786 "A. It is all semantics. I am their exclusive agent. That is the way I have always described myself. In that sense, I am an agent."

Mr. RAICHLE: Over on page 108:

"Q. When you were in the Department of Justice the other day, did you meet the Union representatives of the International Color Printing there?

"A. Yes."

Mr. RAICHLE: Page 109:

"Q. Did you inform the Union representatives of International Color Printing that you were taking business away from International Color Printing?

"A. No, sir.

"Q. Did anybody so inform them in your presence?

"A. No, sir."

Mr. RAICHLE: Page 111:

"Q. Who is Jack Nealands?

"A. Jack Nealands is a man who was christened George Nealands. He is a first cousin of mine, and I understand he used to be with the Chamber of Commerce in Sylacauga and now he is in charge of some sort of commission to get new
787 industries for Sylacauga. A very nice young man. Not so young any more.

"Q. Did you ever tell him this plant would open?

"A. No, I have no recollection of that. I haven't talked to him."

Mr. RAICHLE: Page 112:

"Q. Did you tell him that it never opened under the ownership of Greater Buffalo?

"A. As I said this morning, that would have been a positively absurd statement for any intelligent man to make.

"Q. Is that what makes you think you didn't make it?

"A. I am sure I didn't make it.

"Q. In your solicitations, you have called on every paper in the area, haven't you?

"A. Over a period of years, I have called on nearly all of them, sir. I wouldn't say definitely I saw all of them. I remember, in my last deposition I excluded Louisville. There is one paper I never called on."

Mr. RAICHLE: Further down on page 113:

"Q. So far as you know, was Mr. Smith's operation
788 an efficient one?

"A. Yes, sir.

"Q. As efficient as Greater Buffalo Press, would you say?

"A. I have never witnessed the operation of the Greater Buffalo Press, but considering their product and so on, I would say that Southern Colorprint is just as efficient. They may not have some of the gimmicks that Greater Buffalo has. On the other hand, Greater Buffalo may not have some of the gimmicks they have."

Mr. RAICHLE: Page 114:

"Q. You know of no reason why Mr. Smith couldn't successfully compete?

"A. No. I know of no reason.

"Q. With Sylacauga?

"A. With Sylacauga."

Mr. RAICHLE: Page 115:

"Q. By the way, Southern Color, Mr. Smith's outfit, purchased a press from Hearst, didn't it?

"A. Yes, that is in the previous deposition.

"Q. That doesn't condemn it, does it?

"A. Condemn? What, Mr. Smith, Southern Color,

Hearst Press, or Hearst?

"Q. No the subject matter. When was that purchase

made?

"A. I would say about a year and a half to two years ago."

Mr. RAICHLE: Line 18:

"Q. Do you know what Mr. Smith paid for it?

"A. Yes, sir.

"Q. What did he pay?

"A. \$35,000, I understand. He spent a good deal on it in rebuilding it and making changes in it, a good deal more than it

cost.

"Q. It is essential to his operation; helpful to his operation?

"A. Yes, it is helpful to his operation."

(Thereupon the balance of Jack R. Hornady's deposition was copied into the record as follows; starting at Page 92:)

"Q. You were served with a subpoena as found by the Court.

You had made representations that you had not been subpoenaed. You had indeed been subpoenaed?

"Mr. LAYTON: Don't listen to the speeches made by this gentleman. Let the record show that Mr. Hornady is here under oath and testifying. If you do not care to continue with the deposition, that is your prerogative.

"Mr. RAICHLE: I am not going to have you interrupt it.

"Mr. LAYTON: I will interrupt any time I see fit.

"Mr. FELDMAN: Can we have the last question read and then could you note your objection for the record and then proceed?

"(The record was read back by reporter.)

"Q. Is that right or wrong?

"A. There are elements of time involved. Has that been since I was associated with the project?

"Q. Answer that part, if you will.

"A. Since I was associated with the project, we haven't had any substantial losses.

"Q. You have no basis for complaint, have you?

"A. No, not about what they had taken away from us.

"Q. Just one, single complaint to make about International Color Printing or Greater Buffalo Press since

you left King Features and went with Southern Colorprinting? Yes or no, please.

"Mr. LAYTON: I would like to ask at this point what kind of complaint the question is directed toward?

"Mr. RAICHLE: I am going to leave the question the way it is and press it.

"The WITNESS: Read it back, please.

"(The pending question was read by the reporter.)

"A. I had a number of complaints regarding the activities of agents of Greater Buffalo Press and International Color Printing.

"Q. Do you mean King Features?

"A. King Features, NEA.

"Q. Can you tell me one thing that Greater Buffalo Press did or International Color Printing did, or Dixie Color Printing did of which you complained?

"A. Nothing, except what they did, sir.

"Q. By 'the agent', let's particularize, you mean King Features?

"A. King Features and NEA.

792 "Q. When you say 'the agent', you have previously told me you stood on the testimony you gave last time and the last time you said that International Color Printing was a subcontractor of King Features, didn't you?

"A. I may have. I don't know.

"Q. Was that the truth?

"Mr. LAYTON: I object to the characterization of the previous testimony.

"A. I remember saying at the time that when an organization or a representative goes in to see somebody to sell him something——

"Q. That isn't responsive to my question.

"A. It is on the same subject.

"Q. When you said before that International Color Printing was a subcontractor of King Features, was that the fact?

"A. I am not sure——

"Mr. LAYTON: At what particular time are you referring to this testimony—his previous testimony a year and a half ago or this morning?

"Mr. RAICHLE: When he testified last time, as he has said, that he reaffirms it now.

793 "Mr. LAYTON: Would you have any objection to the witness refreshing his recollection?

"Mr. RAICHLE: You mean if I can prove it he will admit it?"

"Mr. LATTON: I am not making any such statement."

"Mr. RAICHLE: I want him to answer the question."

"A. I think it is fairly simple. You make a contract and do the work or part of the work. You have a subcontractor——"

"Q. I am asking if what you said before on the subject is the truth?"

"A. I would say that it was—International was a subcontractor of King Feature Syndicate."

"Q. Save for anything that King Features might have done or the NEA might have done, can you tell me one, single complaint that you have of the conduct or any act or deed on the part of International Color Printing or Greater Buffalo Press?"

"A. That is a long period of time."

"Q. Since you went with that Southern Colorprinting?"

"A. That's been nearly seven years."

794 "Mr. RAICHLE: Let the record show the witness is taking some time to answer."

"Q. Tell me what is the complaint?"

"A. I've got a perfect right to take time to answer. I want to tell the truth. I've got to have time to recollect, sir."

"Q. Tell me the complaint, what is it?"

"A. Wouldn't it be a good idea for you to calm down and let's conduct this examination the way you did this morning."

"Q. Don't lecture me."

"A. I will lecture you if you lecture me."

"Q. As you sit there now, you have not had time enough to recollect any complaint which you have to make against these two companies?"

"A. Because you have been constantly interrupting my reflection."

"Q. From you uninterrupted reflection, in the quiet and peace of the consolation of your counsel sitting there to help you, you can tell me."

"A. Give me a little uninterrupted to tell you."

"Q. All right."

795 "A. I was not conscious of my own knowledge, prior to the filing of this case, that Greater Buffalo was engaged in any activities that were hurtful to me and at the same time unfair."

"Q. Since you went with Southern Colorprinting—if you quarrel about that expression——"

"A. Atlantic Features.

"Q. Since you have been seeking printing business for Southern Colorprinting Company, some time in 1956, I think you said——

"A. Yes, sir.

"Q. Can you tell me a single act or deed on the part of the Greater Buffalo Press, International Color Printing or Dixie Color Printing, of which you complain or which you would even criticize?

"A. No, I don't recall anything, sir.

"Q. Prior to the time that the government sought this restraint against these defendants, did you discuss with the Department of Justice or any representative of the Department of Justice the matter of obtaining such a restraint?

"A. Would you repeat the question, please?

(The pending question was read by reporter.)

"A. By restraint, I assume you mean not permitting the opening of the Sylacauga plant? No, sir, I did not discuss that.

796 "Q. Did you ask for such a restraint?

"A. No, sir.

"Q. Do you ask for it now?

"A. No, sir.

"Q. Do you know of any reason why it should be continued, so far as you are concerned?

"A. Just as I said this morning, from a predatory—if there were no predatory actions to be feared that would cause me to lose some of my clients, the answer is that I have no legitimate complaint. I wouldn't like—I mean it isn't a question of my likes or dislikes and I don't think I have any right to object to anything, but that was my fear.

"Q. If the Sylacauga plant did not sell below cost and competed fairly with you on that basis, you would have no objection to their operation, would you?

"A. As I said a while ago, I am in no position to object or not object. If you ask me would I like it, naturally, anybody likes less competition, but they do not expect it, naturally.

"Q. In other words, you can think of no basis on which you are entitled to freedom of competition?

"A. With the reservation about the predatory—
797 possible predatory action.

"Q. Assume fair, honest, decent, good faith, hard com-

dition, do you know of any reason you are entitled to be protected against that?

"A. With that assumption I don't know of any reason.

"Q. Can you tell me anything that Greater Buffalo Press, International Color Printing or Dixie Color Printing has done on date during the time that you have been with Southern Colorprinting or Southern Printing on their behalf, there haven't been honest, decent, fair competition?

"Mr. LAYTON: I think you asked him previously whether he had anything to complain about and I think he answered it.

"Mr. RAICHLE: He answered no.

"A. In answer to this last question, there is a letter in the records from Mr. Koessler to his representative Mr. Hershiser, in which Mr. Koessler instructed Mr. Hershiser to go after Newport News. He made a suggestion that one of the means of going after Newport News, that may be these eight-page customers of Newport News could be reduced to six pages, which is difficult for Newport News to print, or the twelve pages could be reduced to ten pages, which Newport News could not print, and, in other words, he was instructing his employees to try to diminish the market for him to have an advantage over me.

"Q. Is that your only complaint?

"A. That is the only one I think of, sir.

"Q. You have had months, hours on end with Mr. Feldman and the rest to think of them, haven't you?

"A. I have had considerable time.

"Q. And that is the best or the worst, depending on the point of view, that you can come up with on that subject; is that right?

"A. I have stated what I have.

"Mr. LAYTON: I will object to the form of that question.

"Q. That isn't very different from Koessler trying to sell a Cadillac against your Ford, is it?

"Mr. LAYTON: Is that a question?

Mr. RAICHLE: Yes, that is a question. What did you think it was?

"Mr. LAYTON: It sounded like another speech.

"The WITNESS: I think it is a pretty loaded question.

By Mr. RAICHLE:

"Q. Aren't you loaded?

"A. Loaded with what?

"Q. Information.

"A. No more so than the average person, sir.

"Q. I am simply seeking your answers. Don't be offended.

"A. You have interrupted the answer that I was going to make about the Ford and Cadillac. Well, you don't say that Mr. Koessler's product compares to my product like a Cadillac compares to a Ford. They are of equal quality, size, and so forth, as Mr. Koessler's products, and I think that that was a sort of a designed question for you to make that comparison.

"Q. You thought the comparison was a poor one?

"A. Yes, that's right.

"Q. Your product and Koessler's product you say are the same?

"A. In some cases ours are better; in some cases his are probably better. I don't know. They look about the same. They are not enough different to make the reader of a newspaper
800 or ordinarily the publisher of a newspaper to see any great difference in them.

"Q. They are competitive?

"A. That's right.

"Q. Competitive in point of quality, competitive in point of price, competitive in point of service?

"A. Competitive in quality and service. In some cases I can give better service than Mr. Koessler because I am closer to them. In some cases he doubtless can do the same. I do think that because of the fact that I don't print nearly as many papers as he does, that I can probably give a little more individual service than he can. All of that is not of great significance. As to prices, they are generally competitive.

"Q. When you say you are nearer to them in certain instances, you mean the Southern Color printing plant is nearer?

"A. That is what I mean, yes.

"Q. That gets back to this transportation saving?

"A. Yes.

"Q. The newspapers in the South are presently de-
801 prived of the saving that would result from doing business with the Sylacauga plant; is that right?

"A. If they—

"Q. Is that right?

"A. I am trying to answer. If they are to be given the benefit of those savings, they are being deprived of those savings. They were deprived of them up to the time of the order. They subsequently have been deprived of them because there had

been no action by Greater Buffalo or Dixie Color on the order.
 "Q. Do you pass on the transportation saving to the customer?

"Mr. LAYTON: Pardon me. I don't understand the question. Read it back, please.

"(The pending question was read by the reporter.)

"Q. In this area that we are talking about?

"A. In most of my—in all of my contracts, I contract FOB Newport News. The publisher pays whatever the transportation is. If he is paying the transportation from Wilkes Barre, and there is a saving from Newport News, he gains the benefit of that.

"Q. If the Sylacauga plant operated, it would also have to pass on the saving in the same way to be competitive with you, isn't that right, as a practical workaday fact of life?

"A. It would depend on the location. If, for instance, it had a transportation cost from Birmingham of, let's say, fifty cents per one hundred weight, whereas from Wilkes Barre it was \$1.25 per hundred weight, there is a 75 cents saving. If he let Birmingham get the full benefit of that seventy-five cents, then Birmingham would, of course, save that sum out of that cost. But you say he would have to do that in order to protect his transportation rates as against what I could get. Well, suppose mine were one dollar from Newport News and they would save seventy-five cents, I would still be higher than he is, and so there would be no competitive compulsion on the part of him giving me an order. That all depends—it is rather involved—but that all depends on the degree of savings, the amount of savings, the distances involved, and so forth.

"Q. Who gets the business down there, if the Sylacauga plant is operating? It is going to depend very much on the freight savings; isn't that so?

"A. Yes, sir, I think so, providing costs are regular, competitive.

"Q. This business that you have taken from International Color Printing, this volume that you told us about this morning, including that which you took the other day, you didn't take that below cost, did you?

"A. No, sir.

"Q. You took it at a profit?

"A. Yes, sir.

"Q. You have taken all your business at a profit?

"A. Yes.

"Q. All the printing business for Southern Colorprinting Inc.?

"A. That is correct, sir.

"Q. In each of these instances where you took the business from International Color Print?

"A. Yes, I have always had some profit.

"Q. Are you talking profit for Southern Colorprint?

804 "A. I am talking profit for Atlantic. I assume that in the rates quoted me by Mr. Robert Smith, the manager of the Southern Colorprinting plant, that he is making a profit.

"Q. So far as you know, he is?

"A. Yes.

"Q. What does he charge you average per thousand for your fours?

"A. I don't think that I need to give up the competitive information as to my cost.

"Q. Mr. Smith is walking around with our figures down there and conferring with you about them.

"A. He never asked you for those figures.

"Q. He asked Mr. Feldman for them, didn't he?

"Mr. LAYTON: I don't think this is too germane.

"Mr. FELDMAN: I am going to object to that question.

"Q. You gave them to him. Anyway it is a competitive advantage to have them, isn't it?

"A. Oh, yes, competitive advantage.

"Q. One which you now enjoy under this order?

"A. I don't have them.

"Q. Mr. Smith has them, and how; right?

"A. I don't know how much he's got or whether they are the prices his newspaper pays or whether they are the prices the agents pay, or King Features, NEA pay to Mr. Koessler.

805 "Q. Are you the agent for Southern Color or is Southern Color subcontractors for you; which is it?

"A. It is all semantics. I am their exclusive agent. That is the way I have always described myself. In that sense, I am an agent.

"Q. Have you read these contracts put in evidence here, or been marked for identification?

"A. I have read all but the standardized fine type. I know about what they contain.

"Q. When you were in the Department of Justice the other day, did you meet the Union representatives of the International Color Printing there?

"A. Yes.

"Q. Who by name did you meet?

"A. I don't know any of their names.

"Q. You were an executive in the Department of Justice talking to our Union representatives?

"A. I said hello, that sort of thing. I didn't have any sort of conference with them.

"Q. You did not?

"A. No.

"Q. Who introduced you to them?

"A. I had met them in Buffalo.

"Q. Who introduced you on this occasion or who got you together? Mr. Feldman?

"Mr. LAYTON: I don't think there has been any testimony that they were introduced.

"Q. You were talking to them, you said?

"A. I had seen them before. I ran into them, said hello and so on.

"Q. What were they doing there?

"A. I don't know. I didn't ask them. I assume they were there in connection with this case, just as they were in Buffalo in connection with this case.

"Q. What day was this that the Union were down there at the same day you were?

"A. The same day I was there. We tried to figure that out this morning, I believe it was Tuesday or Wednesday of last week.

"Q. Did you inform the Union representatives of International Color Printing that you were taking business away from International Color Printing?

"A. No, sir.

"Q. Did anybody so inform them in your presence?

"A. No, sir.

"Q. Were they there for the purpose of being lined up in opposition to the opening of the Sylacauga plant?

"Mr. LAYTON: I object to the nature of that question.

"Mr. FELDMAN: I object to the form of the question.

"Q. Do you know why they were there?

"A. They did not tell me, Mr. Feldman did not tell me, no one told me why they were there.

"Q. You recognized them from having seen them before, did you?

"A. That's right.

"Q. Who by name was there?

"A. I have said I don't know.

"Q. How many were there?

"A. Three or four.

"Q. Did you know they were going to be there before you arrived?

"A. No, sir.

"Q. Did they stay after you left?

"A. They were there when I left Mr. Feldman's office after lunch to go back to the library, but they were gone when I finished in the library.

"Q. Who else was there?

808 "A. Mr. Lawson.

"Q. Who is he?

"A. He is a mechanical superintendent of Southern Color-print and Mr. Smith came in during the afternoon.

"Q. What was Lawson doing?

"A. He was there talking to Mr. Feldman.

"Q. About these figures, these projections?

"A. I didn't hear his conversation because he was talking to Mr. Feldman while I was down the library reading my deposition.

"Q. Who is Jack Nealand?

"A. Jack Nealand is a man who was christened George Nealand. He is a first cousin of mine, and I understand he used to be with the Chamber of Commerce in Sylacauga and now he is in charge of some sort of commission to get new industries for Sylacauga. A very nice young man. Not so young any more.

"Q. Did you ever tell him this plant would open?

"A. No, I have no recollection of that. I haven't talked to him.

"Q. Did you ever discuss the opening of the plant with him?

809 "A. It seemed to me that I was going through Sylacauga one time and looked him up and he said, 'They are working on it, we hope they will be open soon.'

"Q. What did you say, 'I hope so too'?

"A. No, sir, I can't say that I said that.

"Q. You went through the plant, didn't you?

"A. I passed outside of it.

"Q. You were not above looking at it, were you?

"A. No, I looked at it, but I didn't go look in the plant. I looked at it, the building is there.

"Q. Did you tell him that it never opened under the ownership of Greater Buffalo?

"A. As I said this morning, that would have been a positively absurd statement for any intelligent man to make.

"Q. Is that what makes you think you didn't make it?

"A. I am sure I didn't make it.

"Q. In your solicitations, you have called on every paper in the area, haven't you?

"A. Over a period of years, I have called on nearly all of them, sir. I wouldn't say definitely I saw all of them. I remember, in my last deposition, I excluded Louisville. There
810 is one paper I never called on.

"Q. With that exception, you have solicited all of them?

"A. And perhaps a few smaller papers I haven't gotten around to, over the period of my employment by Atlantic.

"Q. So far as you know, was Mr. Smith's operation an efficient one?

"A. Yes, sir.

"Q. As efficient as Greater Buffalo Press, would you say?

"A. I have never witnessed the operation of the Greater Buffalo Press, but considering their product and so on, I would say that Southern Colorprint is just as efficient. They may not have some of the gimmicks that Greater Buffalo has. On the other hand, Greater Buffalo may not have some of the gimmicks they have.

"Q. Would you say the same thing about International Color Printing?

"A. Comparatively, yes, the same.

"Q. I mean, Mr. Smith's operation there at Southern Color is as efficient as the International Color?

"A. As far as I can tell from the distance.

811 "Q. So far as you know, based on your experience, his efficiency would certainly compare with that of the operation of the Sylacauga plant?

"A. His ability to turn out a good finished product.

"Q. At a competitive price?

"A. At a competitive price.

"Q. Would compare favorably with any operation at Sylacauga, wouldn't it?

"A. Now you switched from Wilkes-Barre, Buffalo, to Sylacauga. I don't think I can speculate as to what operation at Sylacauga is going to be.

"Q. You know of no reason why Mr. Smith couldn't successfully compete?

"A. No, I know of no reason.

"Q. With Sylacauga?

"A. With Sylacauga.

"Q. By the way, Southern Color, Mr. Smith's outfit, purchased a press from Hearst, didn't it?

"A. Yes, that is in the previous deposition.

"Q. That doesn't condemn it, does it?

"A. Condemn? What, Mr. Smith, Southern Color, Hearst Press, or Hearst?

"Q. No, the subject matter. When was that purchase made?

"A. I would say about a year and a half to two years ago.

"Q. Since the lawsuit has been started?

"A. Yes, sir, I think so.

"Q. Is that press in use?

"A. Yes, sir.

"Q. Do you know what Mr. Smith paid for it?

"A. Yes, sir.

"Q. What did he pay?

"A. \$35,000, I understand. He spent a good deal on it in rebuilding it and making changes in it, a good deal more than it cost.

"Q. It is essential to his operation; helpful to his operation?

"A. Yes, it is helpful to his operation.

"Mr. RAICHLE: That is all.

"Mr. FELDMAN: I would like to start tomorrow.

"Mr. LAYTON: Off the record.

"(Discussion off the record.)

"Mr. LAYTON: We will adjourn until tomorrow morning at 10:30.

"(Whereupon, at 3:10 p.m., the deposition was adjourned to Friday, December 7, 1962, at 10:30 a.m., same place.)"

813 Mr. RAICHLE: Now, the next deposition you will be relieved to know is somewhat shorter. I say the next deposition I mean the next session had on the following

day. I understand from what Mr. Feldman said, he would rather point his examination up or what he considers the highlights or important parts of it by brief. I would like to quickly call your attention to one or two things in my redirect examination. Page 173, please, line 16:

"Mr. Hornady, you speak of no guarantee or counsel speaks of no guarantee—no assurance that the freight savings which we have been talking about, the transportation savings in the Southeastern area would be affected if Sylacauga opened. Your competition would require them to be passed on to the newspaper. You are doing it, aren't you?"

"A. In all cases, yes."

"A. Whoever the operator of Sylacauga was couldn't compete with you unless he did the same thing effectively?"

"A. As long as I am in business, I would be to some extent and in some cases a deterrent to any higher rates that Sylacauga plant might charge."

"Q. Who gave you this information about Macon that you were giving here?"

"A. You mean about the transportation?"

"Q. Yes. Who, by name?"

"A. Mr. Bert Strubel, the general manager."

"Q. When?"

"A. About the time I obtained this contract."

Q. When was that, if you will refresh my recollection?

815 "A. The contract is dated the 11th of June, so it must have been—

"Q. Of what year?"

"A. 1962. So it must have been early June or the latter part of May."

"Q. What you know about that is hearsay, something he told you and you heard?"

"A. That is correct, sir."

"Q. I will try to adopt your words so we don't get into any unnecessary argument about phrasing these things."

"You said that the tie-ins and the reduction of prices under certain circumstances, and these other matters and things which you characterized as predatory practices, were not engaged in the course of ethical solicitation of business. Do you remember so stating?"

"A. Yes."

816 "Those are the things which you have done all your life, isn't that so?"

"A. It is not, sir. I have always conducted myself on an ethical basis.

"Q. You conducted tie-in sales, so you claimed, didn't you when you were with Hearst?

"A. I did on instructions.

"Q. But you did it, didn't you?

"A. Yes, I did it. Please don't try to intimidate me by your tone of voice, counsel."

Mr. RAICHLE: Now, let's see, page 176:

"Q. After you went with Southern Colorprinting, you continued this business of selling comic features and printing, didn't you?

"A. Yes, I was selling features for the Hall syndicate.

"Q. You testified in your previous deposition that what you were doing individually was exactly what Hearst had
817 been doing, isn't that true?

"A. In the sense that that was the sort of business I was engaged in.

"Q. You have reduced prices to meet competition, haven't you?

"A. Yes, sir.

"Q. Have you reduced prices to eliminate competition, haven't you?

"Mr. LAYTON: During what period of time?

"Q. Since you have been with Southern Colorprinting.

"A. You mean eliminate competition in the sense of getting rid of the competition altogether or in meeting the competition with a specific instance?

"Q. Both.

"A. I will never try to put King Feature Syndicate or Greater Buffalo or NEA out of business.

818 "Q. What about taking all that business in the field that Eastern Color had?

"A. That is not putting Eastern Color out of business. Eastern Color I still think is next——

"Q. Would you have——

"A. I didn't finish my previous answer.

"Q. Please.

"A. I did not. I was not attempting to put Eastern Color out of business and I did not come anywhere near it. I just eliminated their business in Greensboro, North Carolina. They still do a tremendous amount of printing in the eastern states.

"Q. But not in the southeastern states, the area with which we are concerned?

"A. That is correct, sir.

810 "Q. Let me see if despite our little personal clash here we can get something else. You say this Court order of June 22, 1962 was not entered for your benefit; is that right?

"A. No, sir. This whole case.

"Q. Was it entered for your benefit?

"A. Not that I know of. I wouldn't assume so.

815 "Q. Was it entered for the benefit of the newspaper publishers, the consumers in this industry?

"A. No, sir, I think it was entered for——

"Q. Please let me ask the question."

Mr. RAICHLE: Down at the bottom of page 181, line 24:

820 "Q. If you did not have the competition of Sylacauga in the areas where you are nearer and in closer proximity than International up in Wilkes Barre, Pennsylvania, you would have the competitive advantage which you swore to yesterday, isn't that so.

"A. It is the same sort of competitive advantage that Wilkes Barre would have and Dunkirk would have in soliciting business in the eastern part of the United States."

Mr. RAICHLE: Down at Line 19:

"Q. Do you claim you did not have a competitive advantage; let's take it that way.

"A. I haven't claimed anything."

Mr. RAICHLE: Down at the bottom of 192:

"Q. Can you service Birmingham if Sylacauga is operating?

"A. I could print for them, if that is what you mean, sir.

821 "Q. If Sylacauga was operating and transportation costs were passed on to the customer, then certainly in Birmingham, in Chattanooga, Huntsville and in Montgomery, there would be substantial savings to the publisher; isn't that true?

"A. If he were given the benefit of the savings and the price he is paying would not increase and so on, subject to those qualifications.

"Q. Assuming that all of the savings were passed down to him, the savings would be substantial; isn't that true?

"A. Yes, sir, they would be fairly substantial, I think.

"Q. As long as this order continues to operate, those savings cannot be effective; isn't that true?

"A. Those savings which are based on the assumption that they would get them, could not be effective.

"Q. Do you know of any good reason why the publishers in those towns which I have just read should pay a higher price through a denial of transportation savings so that you can operate without the competition of Sylacauga?

"A. No, sir. I don't know of any reason why they
822 should have that attitude."

Mr. RAICHLE: Well, with the understanding that the deposition will be completed with the portions illustrated specifically at this time to call to your Honor's attention, I think Mr. Feldman has something.

Mr. FELDMAN: In our brief we shall allude to the portions of the depositions we think are important. I would like to point out certain things in regard to the cross-examination of Mr. Hornady which we respectfully ask your Honor to bear in mind. Mr. Hornady is basically telling the truth of what he felt regarding the Sylacauga's plant's opening. His opposition is based upon his testimony that all the extra runs he received were
823 gotten through fair, open, clear competition and any implication that these runs were not taken in that way we think was dispelled by certain portions of the deposition. In addition to that, certain other factors have been brought up. One, these projection figures. I think the cross-examination will reveal he never got them in any illegal way or never sought to use them for any purpose which would be detrimental to his competitors. In addition, there was a question in regard to his meeting union officials. The testimony, it will be noted, shows he went on his way and had no discussions with him in regard to the purchase of the press. That was on
824 April 3, 1961. With that I have no further comments with regard to Hornady's deposition.

Mr. CLIMENKO: May I make a brief comment regarding what Mr. Feldman said, what Mr. Feldman has said, that the competition which Mr. Hornady, the beneficiary apparently of this order, obtained this increase in business was fair competition. Now, if your Honor please, I think that since that statement has been made, it ought to be measured with an understanding of the background and what it means and what the impact of this statement is in connection with Hearst. Our printing for all of these particular contracts which have swelled the size of Mr. Hornady four hundred per cent in the

eighteen months since the entry of his order, his gross
 825 has been swelled at our expense and his gross has been
 swelled by the process of his being able to take our cus-
 tomers not by fair competition but in consequence of his ob-
 taining a geographical advantage denied us and denied us in
 consequence of the fact that those runs under this order could
 not be moved out of Wilkes Barre, so that it is a questionable
 statement, it seems to me. This is a complicated case, but it is
 an over-simplification of the facts for Mr. Feldman to say to
 your Honor that Mr. Hornady obtained the runs, taking them
 away from King and the rest through fair competition. He got
 them in consequence of a number of factors; one, as a
 826 person who had formerly worked with us, he had a com-
 petitive factor of knowing what our price was, a factor
 your Honor heard reported in this deposition. Starting from the
 fact that he had moved away from us into an arrangement
 which to use a euphonism was not quite an extension of his
 obligation of loyalty, starting from that, starting from the
 knowledge that he had obtained as a former employee, he then
 proceeds under the cover of the order of this Court to take away
 from us that which we cannot protect from his deprivations by
 reason of this very order, because your Honor has said that this
 business had to be frozen in Wilkes Barre for the benefit of the
 Wilkes Barre unions. Now, if your Honor please, the purpose
 of the order is dispelled by the fact that he takes it
 827 and he obtained it against the interest of Wilkes Barre
 and obtains it only because of this transportation ad-
 vantage which we are unable to neutralize. We can't compete
 with him because we are fettered by this order of this Court.
 Now, if your Honor please, the question of the ultimate fair-
 ness of this order, the question of the ultimate issues of this
 case project very complicated issues, I know, but I have sat here
 for several days as your Honor knows, throughout these hear-
 ings and we have exercised, I think, a commendable reserve
 about not intruding into these hearings, because we were not
 offering testimony and not for a reason that is known
 828 to everybody concerned with this case, but it seems hard
 for me to sit here and to hear it said that this was fair
 competition when we know it is not fair competition. It is not
 competition at all; it is the accusation of our business by any-
 one who by any rules of proper conduct should have been in a
 position to take it. Secondly, it is in a consequence of exporta-
 tion of this court. I am sorry, but I felt compelled to respond.

(The continued deposition of Jack R. Hornady reads as follows:)

829 "United States District Court, Western District of New York

"Civil Action No. 9004

"UNITED STATES OF AMERICA, PLAINTIFF

"against

"GREATER BUFFALO PRESS, INCORPORATED; THE HEARST CORPORATION; NEWSPAPER ENTERPRISE ASSOCIATION, INC.; THE INTERNATIONAL COLOR PRINTING COMPANY, SOUTHWEST COLOR PRINTING CORPORATION; AND DIXIE COLOR PRINTING CORPORATION, DEFENDANTS

"Continued deposition of JACK R. HORNADY, taken on behalf of the defendants Greater Buffalo Press, Incorporated, International Color Printing Corporation and Dixie Color Printing Corporation, pursuant to adjournment, at the offices of Gilbert & Segall, Esqs., 405 Park Avenue, New York, New York, on Friday, December 7, 1962, at ten-thirty o'clock in the forenoon, before George Abraham, a Certified Shorthand Reporter
830 and Notary Public within and for the State of New York.

* * * * *

"Appearances: Raymond M. Carlson, Esq., attorney for plaintiff, c/o The United States Attorney, U.S. Court House, Buffalo, New York, by *Elliott H. Feldman, Esq.*, of counsel.

"*Raichle, Moore, Banning & Weiss, Esqs.*, attorneys for defendants Greater Buffalo Press, Incorporated; International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York, by *Frank G. Raichle, Esq.*, of counsel.

"*Gallop, Climenko & Gould, Esqs.*, attorneys for The Hearst Corporation, 360 Lexington Avenue, New York, New York, by *Leo Schwartz, Esq.*, of counsel.

831 "Gilbert & Segal, Esqs., attorneys for the witness, 405 Park Avenue, New York, New York, by *Robert Layton, Esq.*, and *Robert E. Young, Esq.*, of counsel.

"*Baker, Hostetler & Patterson, Esqs.*, attorneys for defendant Newspaper Enterprise Association, Inc., 1956 Union Com-

merce Building, Cleveland 14, Ohio, by *Richard F. Stevens, Esq., of counsel.*

Lord, Day & Lord, Esqs., attorneys for King Features, 25 Broadway, New York, New York, by Robert Haynes, Esq., of counsel.

832 "JACK R. HORNADY, having been previously sworn, resumed and testified further as follows:

"CROSS EXAMINATION

"By Mr. FELDMAN:

"Q. Mr. Hornady, yesterday some questions came up in regard to the travels you made subsequent to your operation.

"When you traveled subsequent to your operation, were you under a physician's orders or advice?

"A. Yes, sir. He told me not to get myself in any stressful situations and not to work but a few hours a day.

"Q. The publishers you called upon, were these people you had known sometime in the past?

"A. Oh, yes, sir. Most of them I have known for a long time.

"Q. When you spoke with them, were you under any strain?

"A. Oh, no.

"Q. Did your physician advise you in any way in regard to your health as to testifying in this litigation?

"A. No, it never came up with him before I left. I guess that is what—

833 "Q. At any time?

"A. No, I haven't talked with him. My son called him and told him about this thing and he said it would be harmful to me.

"Q. He advised you, through your son, that it would be harmful for you to testify?

"A. Yes, sir, that I was not in a condition to testify.

"Q. Do you find any difficulty in testifying at a deposition and in talking to publishers whom you have testified you have known in the past?

"A. There is quite a difference, sir. It is a relaxed sort of thing, I visit with these old friends. We talk about things going on. I show them a comic strip or I say, 'Well, how much has your contract got to go on your printing?'

"I can end it and leave any time I want to. As compared to that, answering questions hour after hour very carefully in a

deposition, trying to remember things that happened a long time ago, is quite a strain as anyone knows.

"Q. Mr. Hornady, I believe you testified yesterday that when you first came and spoke with me after this deposition
834 was noted, you did not come to see me at my invitation; is that correct, sir?

"A. No, sir. I just dropped in on you.

"Q. What were the circumstances in which you came to see me again, sir?

"A. I had been to the Washington Star and the Washington Post and then I took a cab and went by your office. I got there around noon, 12:30, something like that. You were leaving for lunch.

"I said 'Hello, how are things going?' and that sort of thing.

"Q. At that time, did I give you any legal advice or instructions as to your appearing at this deposition?

"A. No, sir.

"Q. Do you recall what, if anything, I said to you in regard to my intentions as to your deposition before you left?

"A. I think you said, 'I expect to see you Friday in New York at your deposition.'

"I said there was some question whether my deposition would go on Friday, that my lawyers were trying to get it postponed.

"Q. What, if anything, did I tell you?

"A. You said, 'well, you better call your lawyers
835 about that.'

"I told you I was in constant touch with my lawyers.

"Q. In the past, in regard to any time you testified in this case, have I ever given you any legal advice or instructions; this morning?

"A. No, sir. You backed away any time I would ask a question along those lines.

"Q. I believe you testified yesterday, Mr. Hornady, that you saw in the corridor at the Department of Justice certain people who are in the employ of International; is that correct, sir?

"A. I saw them in your office. You know, I went to lunch and I came back. I did not leave this deposition down in the library. I left it in your office.

"I came back to your office to pick up the deposition and to resume reading it, and that is when I saw these gentlemen from Wilkes-Barre.

"Q. Any time when you saw me in Washington, did you ever discuss this litigation with these employees in my presence or in the presence of any attorney of the Department of Justice, sir?

836 "A. No, sir. As I said yesterday, I just saw these fellows and in that few minutes, just said hello to them and asked them how things were going. I was surprised to see them there.

"Q. Mr. Hornady, you testified, I believe, that the first time you saw the so-called projected cost figures submitted by the defendants as to the Sylacauga plant, was when you came to visit me in Washington and to read your deposition; is that correct, sir?

"A. I think there was some confusion in my recollection yesterday about whether I first saw them from Mr. Smith and whether I first saw them from you.

"Last night Mr. Smith and I talked on the telephone and he said that—

"Q. Never mind what he said. What is your present recollection?

"A. My present recollection is that while I saw down in the library, you came by—reading my deposition—you came by and handed me some papers and I looked at them, and that was probably where I saw this sheet of figures, but I didn't have any time to really go over them because you snatched the thing away from me again in about two or three minutes.

"Q. Are you through, sir?

"A. You said you needed it for something else.

837 "Q. Mr. Hornady, I now show you the outstanding motion and affidavits, or at least a copy of the same, which is a record in this case, and ask you whether that was a copy of the papers you saw at that time, sir.

"A. Yes, sir, I think so. It was a thing covered like this and it had affidavits in there from Mr. Hammond and Mr. Raichle.

"Q. Was that the time when you saw the so-called projected cost figures?

"A. I believe it was, yes, sir.

"Mr. RAICHLE: Do you want the record to show what it was you showed him?

"Mr. FELDMAN: It is the motion and affidavits brought by the defendants to modify the June 22nd order of this

838 Court.

"Q. Mr. Hornady, I believe you testified yesterday

that you did not see the motion papers that are now pending in this action; is that correct sir?

"A. That must have been a mistake because if that is a motion—but I didn't know what that was at the time. It was just some papers.

"Q. Mr. Hornady, is it your present recollection that you did see the motion papers, the papers that I just showed you?

"A. I saw papers like that.

"Q. How long did you have them in your possession, sir?

"A. I would say it was less than five minutes.

"Q. I believe you testified yesterday, sir, that Atlantic Features has some thirteen newspaper stockholders; is that correct, sir?

"A. Thirteen newspapers and two others, including myself.

"Q. In the past have you been required to report to these stockholders as to the activities of Atlantic Features?

"A. Sure, I have to give them a report.

"Q. In the past have you received inquiries from these
839 newspaper stockholders as to the activities of Atlantic Features?

"A. Of course, yes.

"Q. Since April 1962, have you reported to your stockholders about this litigation?

"A. I have talked to most of them. One of them wrote me a letter asking me and I wrote him a letter telling him what I thought was the situation at the time.

"Q. Since April 1962, have you received any specific—

"A. 1962?

"Q. 1961—excuse me. Have you received any specific inquiries from such stockholders in regard to this litigation?

"A. As I say, I got a letter from one of the stockholders asking me what the situation was, what it meant to Atlantic, and then the others have doubtless asked me specific questions about it.

"Q. I believe you testified yesterday that you are selling close to forty years in the Southeast; is that correct, sir?

"A. I started as a salesman back in 1923. I was transferred to the Southeast, to the best of my recollection about 1925, and that would be about thirty-seven or thirty-eight years,
840 something like that.

"Q. During that course of time, have you developed any personal relationships with any of the publishers in the Southeast?

"A. Very great many of them.

"Q. Has this come about through your soliciting and bidding for color comic supplements and features in the area?

"A. It has come about through my seeing these people from time to time and for many reasons: business, selling, selling features, selling comic supplements, social, conventions, all that sort of thing.

"Q. Mr. Hornady, how much time do you spend away from your home in New York, as far as your business; is concerned?

"A. Usually it is about half of a year. This year it was really less than half.

"As I explained yesterday, I was away from it during a good time because of the gastrectomy I had this fall.

"Q. In the past, each time that you have called upon newspaper publishers in the Southeast, have you always either solicited or bid for supplements or feature business?

841 "A. No. Sometimes I'd just be going through town, go by and say hello to them and ask them how they like my printing, if they were printing clients—if everything was all right or how they liked a feature I had sold them. Just to visit them.

"Q. Did you have conversations with them as to matters other than the supplement and feature business?

"A. Sure. You mean did I talk to them about things other than business?

"Q. That's right, sir.

"A. Of course I did. I talked to them about their grandchildren and my grandchildren and their families and their hobbies, hunting—what about so and so, a mutual friend—a lot of conversation.

As a matter of fact, I guess any salesman of any kind talks like that, has a lot of conversation irrelevant to business with his customers he calls on.

"Q. Mr. Hornady, do you know whether the bringing of this lawsuit is common knowledge in the newspaper publishing field in the Southeast?

"A. Yes, sir, it was in some of the newspapers, in trade papers and that sort of thing. I think it was the last order issued by the Court—

842 "Q. Is that the June 22nd order you are referring to?

"A. I think it was that order, of the Editor & Publisher which is a major trade paper in the newspaper business.

"Q. Since April 1961, have you ever been asked questions by newspaper publishers as to this present litigation?

"A. Yes, sir.

"Q. Have you volunteered answers, to the best of your ability?

"A. It doesn't follow if I was asked a question did I volunteer answers. I have given answers, to the best of my ability. They say, 'What about this case?'

"I say, 'Well, the present situation is so and so and so and so.'

"Q. Mr. Hornady, I believe you testified yesterday that when you first joined Atlantic Features, Southern was printing something like 700,000 fours; that correct, sir?

"A. Something over 700,000 fours, yes, sir.

"Q. In other words, seven and a half—

"A. 746,000.

"Q. At that time do you know whether Southern was making a profit?

"A. Mr. Smith has told me that they were making a
843 small profit.

"Q. To your knowledge, at that time was Southern or Atlantic actively and aggressively soliciting business throughout the Southeast?

"A. They didn't have any salesmen. Mr. Smith, who was the general manager of a newspaper at that time—I think was mayor or about to become mayor, or something—a very busy man. I think he probably was soliciting business from time to time by sending out form sales letters.

"I do know at one time when I was with King Features Syndicate and there was a meeting of this Southeastern group having to do with awarding that printing contract and I went there to represent King Features Syndicate and Mr. Smith was there representing Southern Colorprint—I am sure he made occasional trips, but he couldn't be a salesman in the sense of a salesman going around calling on papers all the time because he had such other demanding duties.

844 "Q. Is it fair to say that Atlantic Features on Southern's behalf was not aggressively and actively soliciting business?

"A. At what time?

"Q. At the time when you first joined or at the time prior to the time you joined Atlantic Features.

"A. Atlantic, of course, was not doing anything at all because Atlantic was just organized at that time.

"Q. Just directing your attention to Southern—

"A. They were not doing much of a sales job. That is why they arranged this sales representation with Atlantic.

"Q. As to the accounts which you subsequently acquired from the time you joined Atlantic Features to April 1961, as to those accounts, did Southern enjoy a geographic competitive advantage?

"A. In the main I would say they did, yes.

"Q. What was the story in regard to the accounts which you acquired from King or from International for Southern?

"A. What was the story, Mr. Feldman?

"Q. I am talking about the geographic location of the accounts involved.

"A. I think, as I said, most of them were closer to Newport News than they were to Wilkes Barre where they were
845 being printed.

"Also, I suspect that my price was under the price King Features was charging them.

"Q. Were there ever cases where you had this competitive geographic advantage where you were not able to get or acquire accounts?

"A. Many such cases.

"Q. Was this due in any way to the predatory practices you testified about yesterday, or referred to?

"A. Yes, sir. I didn't get some of them because King Features tied in the rights to that subject matter and quoted high rates for that subject matter in case they lost the printing; and other cases they made arrangements with the newspaper to put the business on a delivered basis which was the equivalent of giving them—let me put that differently.

"The delivered basis idea was the equivalent to the publisher of having his supplement already printed at Sylacauga.

"In other words, King Features Syndicate would say, 'You are paying \$1.50 per hundred weight for transportation from Wilkes-Barre; the transportation from Sylacauga would be 75 cents a hundred weight. You know we have been talking
846 to you a long time about starting a plant in Sylacauga and we don't like for you to wait any longer for that savings, so we are going to make a new contract with you, laying the thing down then in your own town, and we will absorb

the difference in the cost of the actual transportation cost from Wilkes-Barre and what it would be if we had our plant at Sylacauga.'

"Mr. RAICHLE: I think I should note this, that you and I can concede that we are taking this deposition under the conventional rule that objections except as to the form of the question and the form of the answer are reserved until it is offered, and much of this is hearsay.

"I did not want to interrupt the gentleman or you.

"My understanding is that objections on the basis of hearsay are properly advanced at the time of the trial or at the time of the hearing.

"Mr. FELDMAN: That is right, sir.

"By Mr. FELDMAN:

"Q. I will ask you, Mr. Hornady, just to facilitate this, to attempt to be more responsive to my questions as we go along.

"By April 1961 how many newspapers were you servicing on behalf of Atlantic Features?

"A. I have forgotten the exact number, Mr. Feldman, but I think it was something around 20 or 22 or something like that.

"I just can't recall those figures.

"Q. How many did you say?

"A. 20 to 22. I just can't recall the exact number.

"Q. Before we go into the subject, Mr. Hornady, going back to the previous question in which you spoke about transportation rates, that situation you then described in regard to King, has that course of conduct been termed in the trade "hypothetical rates"?

"A. I have heard of it spoken of that way.

"Q. Once again asking you, how many newspapers did you have on behalf of Atlantic on or about April 1961?

"A. As I said, I can't recall the exact number, but I think it was 20, 21, 22, 23, 24—something like that. Probably closer to 20.

"Q. With the newspapers which you acquired, namely, the six accounts you spoke about yesterday, that would bring the total number of newspapers up to what?

"A. 28 or 29.

"Q. The press which you testified about yesterday, that Southern purchased, do you know whether that press was purchased before or after April 1961?

"A. I think it was, sir, but I don't remember exactly what date it was.

"Q. You think it was what—before or after?

"A. Yes, before.

"Q. Before April 1961?

"A. Yes, sir.

"Q. Do you know whether that press was installed before or after June 22, 1962?

"A. It was installed before.

"Q. Before June 22, sir?

"A. That is right.

"Q. I believe you gave some figure yesterday as to the total capacity of Southern. Are you qualified to give an opinion as to what the actual total capacity would be of that press, sir?

"A. No, not actually so, sir. That varies. You can say regarding capacity, if a press or several presses run all the time, it can turn out so many four-page units a week or so many supplements a week, but also you have got to figure in that time to repair anything that goes wrong with the press; cleaning the press and that sort of thing. So it varies what the capacity is.

"Q. Is there anyone at Southern who is in a better position to give an opinion as to the total capacity of Southern?

"A. Of course, Mr. Smith who is very close to the situation, is the general manager, and Mr. D. H. Lawson, the superintendent of the plant.

"Q. As to the six new accounts which you acquired since April 1961, how would you describe those accounts—as large, small, medium?

"A. I would describe Charleston, West Virginia and the Greensboro News and Norfolk as fairly large. I describe Macon as about medium, and I describe Greensboro Record and Beckley as small.

"Q. Was your ability to get these accounts in any way due to the installation of this new press which you previously testified about at Southern?

"A. Oh, yes. Our expansion had a great deal to do with not only our ability to take care of this business, but also the confidence that the newspapers would have in our ability to take care of their business.

"There were several instances—am I going on? You said something about responding.

"Q. Yes. In other words, your answer is yes?

"A. Yes.

"Q. Mr. Hornady, during the course of your negotiations to acquire; these six new accounts, did there ever come a time when executives or employees of the publishing accounts came and called upon the premises or plant at Southern?

"A. Yes, sir, I remember that executives from Winston-Salem, North Carolina and Charleston, West Virginia and Norfolk, Virginia, made visits to the plant.

"Q. Mr. Hornady, as far as you know, was the purchase and the installation of this new press or press purchased by Southern related in any way to the order of June 22nd of this court?

"A. No, it didn't have anything to do with any orders.

851 "Q. Mr. Hornady, I believe you previously testified in your previous deposition, and I will read you the particular questions and answers to refresh your recollection—

"On Page 135, 'Question: As a matter of fact, Greater Buffalo never solicited any of your clients, did it?

"Answer: I can't recall but one case, sir.'

"Is that your present recollection as to what took place in the past, sir?

"A. Yes, sir.

"Q. Now, this one case was what, sir?

"A. Greenville, South Carolina News.

"Q. Mr. Hornady, the practice you testified to in regard to Greater Buffalo not soliciting any of your accounts, to your knowledge, has that continued to the present time?

"A. I haven't run into a situation where Greater Buffalo is so soliciting my clients.

"Q. Mr. Hornady, since April 1, 1961 do you know of any case where printing was done at International and has continued to be printed at International, but where the contract holder has changed?

852 "A. Yes, sir. I remember I bid on Columbia, South Carolina State which was then printed under King Features' contract at Wilkes-Barre and NEA also bid upon that printing, and NEA got the business; and executives on the paper told me—

"Q. Without going into that, where was it printed before?

"A. At Wilkes-Barre.

"Q. Do you know where it is printed now?

"A. I have been told by executives on the paper that it is still printed at Wilkes-Barre.

"Q. You have knowledge that it is presently being printed at Wilkes-Barre?

"Mr. RAICHLE: He has information.

"Q. Knowledge or information?

"A. That is right, sir.

"Q. Is there any other paper that you know about?

"A. Danville, Virginia Register was printed at Wilkes-Barre under King Features' contract and the general manager of that paper told me——

"Q. Without going into conversations, do you have any information as to where it is presently being printed?

"A. No. All I know about that is that NEA got the business away from King. I assume it is still printed at Wilkes-Barre, if that is possible, because Wilkes-Barre is closer to Danbury than Buffalo.

"Q. Mr. Hornady, I read you part of the affidavit which has been submitted by Mr. William J. Hammond in connection with the pending motion and it reads as follows:

"I am quoting from Page 2, now——

"I am further informed that Southern Colorprinting corporation has been and is now actively soliciting business, and moreover, obtaining business which Greater Buffalo Press and Dixie Colorprinting Corporation are restrained from soliciting."

"Mr. Hornady, do you know of anything in the June 22nd order which restrained or presently restrains Greater Buffalo from soliciting or bidding for the newspaper contract accounts?

"I am talking now only about the contracts, of the six accounts which you acquired since April 1961.

"A. I know they were restrained from printing them at Sylacauga, but they would not be restrained from printing them at International Color.

"Q. I am talking now about the contract, regardless of where it is printed. Is there anything which restrains Greater Buffalo, as far as you know, under the June 22nd order, from bidding for the contracts?

"A. If they have a place to print them, they can bid for the contracts. It is my understanding that they can print them at Wilkes-Barre. That is all I know on that.

"Mr. RAICHLE: I do not mind you making him an expert, if you want to.

"Mr. FELDMAN: Mr. Raichle, there has been an affidavit submitted here.

"Mr. RAICHLE: It is all right; go ahead.

"By Mr. FELDMAN:

"Q. Assuming that the printing is presently being done at Wilkes-Barre and that the printing will continue to be done there, is there anything under the present order which prevents Greater Buffalo Press from bidding for the contract involved in that particular printing?

"A. Not that I know of, sir.

"Q. Since April 1961, have you bid on more accounts than the six which you acquired?

"A. Oh, yes, I bid on quote [sic] a lot.

"Q. Do you know the exact number?

"A. No. I don't know the exact number.

855 "Q. Can you give me an approximate number?

"A. I think I bid on about 20 papers altogether.

"Q. And the majority of them you did not get; is that correct, sir?

"A. Of course, yes.

"Q. Do you know of anything in the order which prevented or restrained Greater Buffalo from bidding for the newspaper supplement printing contracts for those accounts which you bid on and lost, or did not acquire?

"A. No, sir.

"Q. Mr. Hornady, referring now to the particular six accounts which you acquired since April 1961, referring now to Greensboro, North Carolina, I believe you testified, am I correct, that there were two newspapers involved there?

"A. Yes, sir.

"Q. Is it one publisher you dealt with there or two?

"A. One.

"Q. How did that come about, sir?

"A. You mean how did I get the business?

"Q. No; how did it come about that you only dealt with one publisher, there being two newspapers?

856 "A. The two newspapers are under the same ownership. This man is publisher of both newspapers or general manager. He has all the authority in connection with those two newspapers.

"Q. Mr. Hornady, do you know who was printing for those two newspapers—that is the color comic supplements—immediately prior to the time you acquired the account?

"A. Eastern Color, Waterbury, Connecticut.

"Q. Do you know who was printing these two newspapers since June 1, 1955?

"A. Read that back, please."

"(The pending question was read back by the reporter.)

"A. Eastern has been printing them a long time.

"Q. As far as you know, Mr. Hornady, is there anything in the June 22nd order which restrained or prohibited any of the defendants in this litigation from bidding on either the contract or the printing for those two newspapers?

"A. No, sir.

"Q. In other words, that was open territory for everyone; is that correct, sir?

"A. I assume so, sir.

"Q. In regard to the geographic location——

857 "Mr. RAICHLE: Excuse me, Mr. Feldman. 'Open territory for everybody' you mean as distinguished from a closed territory?

"Mr. FELDMAN: Open in the sense of bidding; anyone could bid on it."

"By Mr. FELDMAN:

"Q. Mr. Hornady, in regard to the geographic location of Newport News to Greensboro, North Carolina, how does that compare with either Waterbury, Wilkes Barre and Dunkirk?

"A. Newport News is closer.

"Q. How does the geographic location compare with Sylacauga, Alabama?

"A. Newport News is closer.

"Q. In regard to the accounts at Charleston, West Virginia, Beckley, West Virginia and Norfolk, Virginia, do you know who did bid for those accounts outside of Atlantic Features?

"A. Better take them one at a time, Mr. Feldman.

"Q. Let us start with Charleston, West Virginia.

"A. I know of no one that bid on that job besides myself, other than the supplier at that time which was King Features.

"Q. Do you know whether Greater Buffalo bid for that job?

858 "A. As far as I know, they did not.

"Q. Going to Beckley, West Virginia, who bid for that account, outside of Atlantic Features?

"A. King Features Syndicate was printing it at that time. I assume they probably made a quotation and I understand NEA also bid on that printing.

"Q. Do you know whether or not Greater Buffalo bid for that account?

"A. Not as far as I know, sir.

"Q. Going to Norfolk, Virginia, do you know who bid for that account outside of Atlantic Features?

"A. No, sir, except in the sense that King Features was already printing it, and the King Feature price was established.

"Q. Do you know whether Greater Buffalo bid for that newspaper?

"A. Not to my knowledge.

"Q. Taking those three newspapers, or considering the three newspapers, how does the geographic distance from Newport News compare to those newspapers in comparison with Wilkes Barre and Dunkirk?

"A. I think that Newport News is a little closer—I don't know how much closer, but it is closer to Newport News than it is to Wilkes Barre and Dunkirk.

"The same is true of Beckley and of course Norfolk is a great deal closer.

"As Mr. Moore said, Norfolk is in Newport News' backyard.

"Q. As to those three accounts, does the June 22nd order of this Court give you, as far as you know, any competitive advantage of obtaining those accounts?

"A. Oh, no.

"Q. There is one other newspaper left and that is Macon, Georgia; is that correct?

"A. Yes, sir, I got Macon.

"Q. Where was that newspaper printed again?

"A. At Wilkes Barre, Pennsylvania.

"Q. Geographically, how does that newspaper compare with Newport News and Wilkes Barre?

"A. You mean the distance?

"Q. The distance, sir.

"A. Newport News is closer than Wilkes-Barre.

"Q. In obtaining this account, were you able to utilize this competitive geographic advantage?

"A. Bert Struble, the general manager of the Macon paper—

860 "Q. I wish you wouldn't go into conversations.

"Mr. FELDMAN: Repeat the question, please."

(Question was read back by the reporter.)

"A. Not in the sense of transportation because the price on transportation from Newport News to Macon was \$1.38 per

hundred weight, as I recall it, and that was the same price that the same trucker was charging from Wilkes-Barre to Macon to haul the supplements when they were printed at Wilkes-Barre?

"Q. In other words, then you were able to offer the same transportation rate as Wilkes-Barre; is that correct?

"A. Yes, sir.

"Q. You mentioned Herndon. Is that the trucker you presently use to service that account?

"A. Yes, sir.

"Q. Herndon Trucking Company, as far as you know, is that a common carrier or what is it?

"A. I don't know whether it is a common carrier in other products or not, but my understanding is that it is a private carrier when it comes to hauling newspaper supplements.

"Q. Does Herndon, to your knowledge, publicize or
861 publish rates that it is going to charge in advance, for any length of time in advance?

"A. Not to my knowledge.

"Q. How do you determine what rate this particular trucker is going to charge?

"A. Asking.

"Q. Do you recall testifying at the time of your previous deposition in regard to Defendants' Exhibit P that you or Southern were not able to utilize the services of Herndon?

"Mr. LAYTON: Could you tell us what Defendants' Exhibit P is?

"Mr. FELDMAN: Yes. It is a letter addressed to Southern Colorprint from Herndon.

"Please read back the last question.

"(Whereupon, the reporter read back the pending question.)

"Q. Do you recall that?

"A. I don't know what Exhibit P was, but I do recall that I have said that the Herndon Trucking Company declined to quote us on some of our hauling when we asked him to.

"Q. Since the time of your deposition, has the situation changed in any respect?

862 "A. Yes, sir. Now Mr. Herndon will quote us rates and apparently wants to haul for us.

"Q. Is this the only account, namely, the Macon, Georgia, which you utilize Herndon for at the present time?

"A. Yes, sir.

"Q. Yesterday, Mr. Hornady, I believe you were asked whether you have a competitive complaint or complaints against International.

"Do you remember so testifying yesterday?

"A. Yes, sir, I remember that came up.

"Q. Mr. Hornady, I show you Plaintiff's Exhibit 25 attached to the affidavit of Mr. Raymond M. Carlson, and ask you to examine the document.

"A. What was the question?

"Q. I asked you to examine it, sir.

"A. Yes, sir, I have examined it.

"Mr. FELDMAN: Exhibit 25, for the record, is a letter from Cranel B. Herndon to International Color Printing Company, dated December 22, 1959.

"Q. Mr. Hornady, assuming the matters and contents of that letter to be correct, I ask you now, do you still say that you have no economic complaint against International?

863 "A. That was certainly hurtful to us, that the main comic supplement that we carry in the south had made some sort of agreement or something with International Color not to carry our supplements, but since this thing started, apparently he has changed his tune because he has been around offering to haul our supplements, although the price he gave us on hauling Macon was, I think, a little unfair since Newport News was a good deal closer to Macon than Wilkes Barre and we ought to have a lower rate.

"Q. In answer to my specific question, assuming the contents of that Exhibit 25 to be correct, would you say now that you have never or would never have or do not have an economic complaint against International?

"A. I had an economic complaint—I mean I have got an economic complaint on the basis of this thing, yes.

"Mr. RAICHLE: On the basis of the assumption?

"Mr. FELDMAN: That's right. The question is predicated on that, sir.

"Q. Mr. Hornady, without Herndon having been made available to you, or at least the services of Herndon, 864 would you have been able to obtain or at least acquire this Macon, Georgia account?

"A. I don't think I would have, sir, because several years previous to that I tried to get Macon and the only rate I could get that was at all comparative to the rate they were paying

from Wilkes Barre was a rate by baggage express on the railroad, which means the newspaper would have to haul the supplement up from the railroad station and as I recall it, they specifically told me they did not want to do this, and that was the reason I did not get the business.

"Q. At the present time, do you know or have any information as to whether Herndon offers rates, transportation rates to International which are advantageous to International as opposed to Southern Colorprint?

"Mr. RAICHLE: The question is 'Do you know?'

"A. The only one that I have definite knowledge of is Macon which does not give Southern Colorprint an advantage, although it is closer to Macon.

"Q. I am talking about other accounts. Do you know of any other instances where this rate advantage exists, although there may not be a geographical advantage?

"A. I don't recall any specific instances. I know they have pretty low rates from Herndon all over the southeast.

"Mr. RAICHLE: 'They' being whom?

"The WITNESS: International Color.

"Mr. RAICHLE: I move to strike that out.

"Q. In other words, then, it is your testimony you don't know of any specific instances; is that correct, sir?

"A. I don't recall any.

"Q. Mr. Hornady, in the event the order of June 22nd was not in existence and imposed no restraints in regard to the operation of the Sylacauga plant, would you have obtained the five accounts, not referring now to Macon, Georgia, if the Sylacauga plant was in operation since April 1961?

"A. I don't think Sylacauga had anything to do with Charleston and Beckley and the two Greensboro accounts and the Norfolk account.

"Q. Is it your testimony, then, that your acquiring or obtaining these five accounts were in no way related to the June 22nd order of this Court?

"A. In no way related to Sylacauga, and Sylacauga is affected by the June 22nd order so they are in no way related.

"Q. In other words, under the June 22nd order did you receive any competitive advantage as far as you know?

"Mr. RAICHLE: Just let me note that no basis has been laid for this. You can go ahead with his answer.

"Mr. FELDMAN: Repeat the question."

(Whereupon, the pending question was read by the reporter.)

"Mr. FELDMAN: I will withdraw the question.

"Q. As far as you know, Mr. Hornady, did the terms of the June 22nd order of this Court offer you any competitive advantage in bidding and obtaining those five accounts you just testified about?

"A. No, sir.

"Mr. LAYTON: I believe there were six.

"Mr. FELDMAN: No, I am not talking about six.

"The WITNESS: No, sir.

867 "Mr. RAICHLE: You say 'offer you.' You don't mean that. Provide for him."

(Previous question was read back by the reporter.)

"Q. Directing your attention to the Macon, Georgia account, assuming that the Sylacauga plant was in full operation since April 1961, and no restraints were imposed upon the operation there, would you have obtained the Macon, Georgia account?

"A. I think it would have been unlikely because they would have enjoyed a much lower transportation cost from Sylacauga to Macon than we could enjoy from Wilkes-Barre to Macon, which is the same as the one I have to live with, so I would say I had no advantage in getting Macon under present conditions, and there would have been a transportation disadvantage if Macon could have been printed at Sylacauga.

"Q. Is it fair to say then——

"Mr. RAICHLE: When you say 'they would have enjoyed', you mean the newspaper would?

"Q. Aren't you referring to International?

868 "Mr. RAICHLE: Wait a minute. You are telling him who he is referring to.

"The WITNESS: Macon happens to be one of those papers that have been on a delivered basis for some time with King Features for International Color Printing and if they had been able to reduce that delivered cost——

"Q. When you refer to 'they', whom are you referring to?

"A. If King Features had been able to reduce that delivered cost because of an ability to print Macon at Sylacauga, then they would have had an advantage because the delivered cost from Sylacagua would doubtless have been less——

"Mr. RAICHLE: The newspaper would have had the advantage?

"Mr. FELDMAN: Wait a minute. He's talking about his competitors; he's not talking about newspapers.

"Mr. RAICHLE: He has testified repeatedly that when the transportation charge is passed down to the newspaper, the customer gets the benefit.

"Do you dispute that?

"Mr. FELDMAN: He is talking about his competition and what took place on a competitive basis. We are not talking about newspapers.

869 "Mr. LAYTON: Why don't you let the witness explain what he means?

"Mr. FELDMAN: Read the last question back, please."

"(The pending question was read by the reporter.)

"A. I think it is unlikely that I would have obtained the Macon, Georgia account, because King Features Syndicate, if they could have had this supplement printed at Sylacauga, would have had their transportation cost lowered. This is a cost figure that they consider in their pricing to Macon because Macon is on a delivered basis.

"Q. Referring to this Macon, Georgia account, do you know whether the newspaper involved when it was printed at Wilkes Barre was charged the actual transportation costs, less or more?

"A. I am not positive of this recollection, but my understanding is——

"Mr. RAICHLE: The question is do you know. It is either yes or no, you either do or you don't.

870 "A. I am addressing this to you, sir. You as an educated man know that there are varying degrees in the meaning of words. If someone asked you, 'Were you completely educated', you would be inclined to say 'Yes. I am an educated man.' But there are doubtless things you don't know, so there are degrees of knowing, and that is what I mean by this.

"What was the last question?

"(The pending question was read by the reporter.)

"A. It is my understanding that——

"Mr. RAICHLE: I object to his understanding. That savors of information, not knowledge.

"A. It is my understanding that——

"Q. Do you have any knowledge at all, regardless of the source?

"A. Well, I think I do.

"Q. Then the answer is yes.

"Will you tell us what knowledge you have?

"Mr. RAICHLE: And in which degree?

"Mr. FELDMAN: No, I am asking him now what knowledge he has.

"The WITNESS: With all these interruptions, Mr. 871 Feldman, I have forgotten what the last question is.

"Mr. FELDMAN: Repeat the question again.

"(The pending question was read by the reporter.)

"A. I believe the general manager of that paper—

"Q. Don't tell me the source, just tell me what the knowledge is.

"A. That King Features Syndicate gave Macon a reduction based on the imminent or future printing of that supplement at Sylacauga, and absorbed out of their own profit, I assume, the difference in the transportation from Wilkes Barre to Macon, which was the larger, and between Sylacauga and Macon, which is the lesser.

"Q. As to the business, Mr. Hornady, you had in April 1961, would you have lost any of that business if the Sylacauga plant had commenced operations without any restraints imposed upon that plant?

"Mr. RAICHLE: I want to note the same objection on the same ground.

"Q. Would you answer the question, Mr. Hornady?

"A. Will you read it again.

872 "(The pending question was read by the reporter.)

"A. I think it is likely that I would have, sir.

"Q. What are the reasons for that, sir?

"Mr. RAICHLE: I move to strike that out on all the grounds I have urged.

"Q. What are the reasons for that, sir?

"A. If there had been no restraint then King Features, let us say, as the agent, could have continued their predatory practices such as including rights to that subject matter, such as making delivered basis deals, such as cutting prices, and in addition to that, they would have had the advantage that the cost to King Features was less on transportation than without Sylacauga being opened.

"Mr. RAICHLE: I move to strike that out, too.

"Q. In the event the Sylacauga plant would commence operations tomorrow, without any restraints at all, would you be in danger of losing any business?

"Mr. RAICHLE: I object to that. There isn't the slightest basis for a question like that. It is improper both as to form and substance.

873 "Q. Will you answer that question, Mr. Hornady?

"A. I think it is quite likely that I would lose some business.

"Q. Would this loss of business concern accounts other than the six contracts you acquired since 1961 and testified to previously?

"A. Yes, sir.

"Q. Would this also be because of the predatory practices you referred to previously?

"Mr. RAICHLE: I object to that.

"Q. Would it?

"A. If those predatory practices were continued, it would.

"Q. Since April 1961, do you know of any instances where the predatory practices have continued? I am talking about since April 1961.

"Mr. RAICHLE: I object to this continuing use of the term 'predatory practices'—assuming it as a fact. It is undefined by him, unidentified in the question.

"The question is bad as to form as well as substance. No basis has been laid for it.

"Mr. FELDMAN: I will withdraw that question.

874 "Q. Mr. Hornady, what do you mean by 'predatory practices'?

"A. It was a word used yesterday by counsel for the defense, Mr. Raichle.

"Q. What did you mean by it when you testified?

"A. I take it to mean practices that are not engaged in in ethical business solicitation.

"Q. Would that include your testimony in regard to hypothetical or absorbing transportation rates?

"A. Yes, I think that is part of it.

"Q. What you testified to in regard to the offering of feature rights and supplement printing, would that be included in your definition?

"A. Very definitely.

"Q. What you testified to is to the non-availability of trucker Herndon. Would that be included in your definition of predatory practices?

"A. Yes, sir.

"Mr. RAICHLE: The non-availability, however occasioned?

If Herndon didn't want to do business with him?

875 "Mr. FELDMAN: Repeat the question.

"(The pending question was read by the reporter.)

"A. My answer was yes, as I recall.

"Q. When you refer to Herndon, do you include in your definition of predatory practices at International's insistence, if you assume the facts as reported in Exhibit 25—

"Mr. RAICHLE: I object to this whole line—this one particularly on the basis of form and substance.

"Q. If you assume the facts, as reported in Exhibit 25, which I just showed you a little while back—

"A. Was that the Herndon letter?

"Q. That's right.

"Do you include in your definition of predatory practices the unavailability of Herndon to Southern at International's request?

"Mr. RAICHLE: That isn't what the letter says.

"Mr. FELDMAN: It reports facts in there to that effect.

"Mr. RAICHLE: It does not.

"Mr. FELDMAN: The letter speaks for itself.

876 "Q. Do you include that in your definition or what you mean by predatory practices?

"A. Yes, sir.

"Mr. LAYTON: At this juncture, can I interrupt to ask Mr. Hornady about how he feels about continuing on at this point?

"The WITNESS: I am very tired because yesterday was a very stressful day for me.

"Mr. LAYTON: Would you like to take a short break?

"The WITNESS: I'd like to ask Mr. Feldman how much longer he has.

"Mr. FELDMAN: I don't know yet.

"The WITNESS: If it is not disagreeable to you gentlemen, I think five or ten minutes might be a good idea now.

"Mr. FELDMAN: All right.

"(Whereupon, a recess was taken.)

"By Mr. FELDMAN:

"Q. Mr. Hornady, I believe you previously testified in your former deposition that based upon your experience, King has acted as the agent for International and that NEA has
877 acted as the agent for Greater Buffalo?

"A. Yes, sir.

"Mr. RAICHLE: Wait a minute. I want to record an objection before the answer, but Mr. Feldman hasn't completed his question.

"Q. I am referring to Page 100 and Page 104 of the previous deposition.

"Mr. RAICHLE: The question of agency and the relationship which he has heretofore under oath characterized that of contractor and sub-contractor is to be determined by the Court, not by this witness, whatever degree of expertise translated into alleged knowledge that he is going to speak from.

"Mr. FELDMAN: I am asking the witness whether he recalls previously testifying—

"Mr. RAICHLE: That doesn't make it better simply because he said it once before.

"Mr. FELDMAN: You have noted your objection.

"Mr. LAYTON: Gentlemen, can we agree that objections, except as to form, are reserved?

878 "Mr. RAICHLE: This one is bad as to form and to substance.

"By Mr. FELDMAN:

"Q. Mr. Hornady, is that still your testimony today in regard to the past practices of King, International, NEA and Greater Buffalo?

"Mr. RAICHLE: That didn't relate to practices. It related to —

"Q. Course of conduct or practices?

"Mr. RAICHLE: I object to that on all the grounds I have been urging. It is bad as to form, substance—no basis has been laid for it. It assumes things outside of the evidence.

"Mr. FELDMAN: I will withdraw the question.

"Q. Mr. Hornady, as far as you know today of the industry, would you characterize the relationship of King and International as that of agent and printer, and the relationship of NEA as agent and that of Greater Buffalo as printer?

"Mr. RAICHLE: I object to that. There is no basis laid for that. It involves a conclusion. It is bad as to form and substance.

"Mr. FELDMAN: I will ask the witness.

879 "A. Yes, in my understanding of the word 'agent', I would say that that is correct.

"Q. Based on your experience, you look upon or find the selling and the printing of color comic supplements to be one industry or different industries?

"Mr. RAICHLE: I make the same objection as to that, that it is even worse.

"Q. Would you answer that question?

"A. Of course it is the same industry. The manufacture of the product and the sale of the product is in the same industry.

"Q. Mr. Hornady, yesterday, I believe you were asked questions about the substantial transportation savings which newspapers would get in the event the Sylacauga plant would commence printing operations; is that correct, sir?

"A. I was questioned about that, as I recall.

"Q. In the event the Sylacauga plant would commence operations, as far as you know, is there any guarantee that any savings which would be effected in transportation would be passed on to the newspapers?

"A. No, sir.

"Mr. RAICHLE: Any guarantee from whom?

880 "Q. What is the basis for that opinion, Mr. Hornady?

"A. I don't know whether Mr. Koessler and King Features Syndicate—whoever holds these contracts—would give the newspapers the full benefit of any transportation savings that might develop. They can raise the prices; they can insist on part of the savings themselves. I just don't know but I don't think that there is any certainty that the newspapers would get all of the savings.

"Q. Since you joined Atlantic Features and Southern has expanded its operations, have any of the newspapers in the Southeast effected any savings because of this expansion?

"A. Yes, sir, I am sure that a number of them have effected savings.

"Q. Did this savings apply to newspaper accounts which you had or did it also apply to other newspaper accounts?

"A. It applied to other newspapers.

"Q. How did that come about, sir?

"A. I would go out for the business and King Features would reduce their rate, or NEA would reduce its rate.

"Mr. FELDMAN: I have no further questions.

881 "Mr. RAICHLE: I have a few.

REDIRECT EXAMINATION

By Mr. RAICHLE:

"Q. Yesterday, when you were asked about this relationship of agent, subcontractor, and so forth, as between King Fea-

tures and International Color, didn't you say in these words, 'It is a matter of semantics'?

"A. I think I did, yes, sir.

"Q. Is that your opinion today?

"A. Yes.

"Q. Do you have the same opinion you had yesterday?

"A. Amplify that question, please.

"Q. You haven't changed your opinion overnight, have you?

"A. As to whether they are subcontractors or agents?

"Q. Yes.

"A. My opinion has been changed to this effect, that I realize that I don't know the technical meaning of subcontractor as opposed to the technical meaning of agent.

"Q. Mr. Hornady, you speak of no guarantee, or counsel speaks of no guarantee—no assurance that the freight savings which we have been talking about, the transportation savings in the Southeastern area would be affected if Sylacauga opened. Your competition would require them to be passed on to the newspaper. You are doing it, aren't you?

"A. In all cases, yes.

"Q. Whoever the operator of Sylacauga was, couldn't compete with you unless he did the same thing effectively?

"A. As long as I am in business, I would be to some extent and in some cases a deterrent to any higher rates that Sylacauga plant might charge.

"Q. Who gave you this information about Macon that you were giving here?

"A. You mean about the transportation?

"Q. Yes. Who, by name?

"A. Mr. Bert Strubel, the general manager.

"Q. When?

"A. About the time I obtained this contract.

"Q. When was that, if you will refresh my recollection?

"A. The contract is dated the 11th of June, so it must have been —

"Q. Of what year?

"A. 1962. So it must have been early June or the latter part of May.

"Q. What you know about that is hearsay, something he told you and you heard?

"A. That is correct, sir.

"Q. I will try to adopt your words so we don't get into any unnecessary argument about phrasing these things.

"You said that the tie-ins and the reduction of prices under certain circumstances, and these other matters and things which you characterized as predatory practices, were not engaged in in the course of ethical solicitation of business.

"Do you remember so stating?

"A. Yes.

"Q. Those are the things which you have done all your life, isn't that so?

"A. It is not, sir. I have always conducted myself on an ethical basis.

"Q. You conducted tie-in sales, so you claimed, didn't you when you were with Hearst?

"A. I did on instructions.

"Q. But you did it, didn't you?

884 "A. Yes, I did it.

"Please don't try to intimidate me by your tone of voice, counsel.

"Q. I am sure you can't be intimidated.

"A. You are quite right.

"Q. Have I offended you?

"A. Anyone who shouts at you will find that offensive.

"Mr. RAICHLE: Let the record show that I am not shouting.

"Mr. LAYTON: Now.

"Q. After you went with Southern Colorprinting, you continued this business of selling comic features and printing, didn't you?

"A. Yes, I was selling features for the Hall syndicate.

"Q. You testified in your previous deposition that what you were doing individually was exactly what Hearst had been doing, isn't that true?

"A. In the sense that that was the sort of business I was engaged in.

"Q. You have reduced prices to meet competition, haven't you?

"A. Yes, sir.

885 "Q. You have reduced prices to eliminate competition, haven't you?

"Mr. LAYTON: During what period of time?

"Q. Since you have been with Southern Colorprinting.

"A. You mean eliminate competition in the sense of getting

rid of the competition altogether, or in meeting the competition with a specific instance?

"Q. Both.

"A. I will never try to put King Feature Syndicate or Greater Buffalo or NEA out of business.

"Q. What about taking all that business in the field that Eastern Color had?

"A. That is not putting Eastern Color out of business. Eastern Color I still think is next——

"Q. Would you have——

"A. I didn't finish my previous answer.

"Q. Please.

"A. I did not. I was not attempting to put Eastern Color out of business and I did not come anywhere near it. I just eliminated their business in Greensboro, North Carolina. They still do a tremendous amount of printing in the eastern states.

"Q. But not in the southeastern states, the area with which we are concerned?

"A. That is correct, sir.

"Q. Let me see if despite our little personal clash here we can get something else.

"You say this Court order of June 22, 1962 was not entered for your benefit; is that right?

"A. No, sir. This whole case.

"Q. Was it entered for your benefit?

"A. Not that I know of. I wouldn't assume so.

"Q. Was it entered for the benefit of the newspaper publishers, the consumers in this industry?

"A. No, sir, I think it was entered for——

"Q. Please let me ask the questions.

"Mr. LAYTON: Have you finished the question?

"Mr. RAICHLE: I am about to ask another one.

"Mr. LAYTON: Let him answer the first one. Read the question back.

"(Question was read back by the reporter.)

"A. I would like to rephrase that. I think it was entered as a part of the adjudication in these cases, whether to benefit the Government or Greater Buffalo or International or the business community or whatever, I don't know.

"Q. Can you give me the name of a single person who has been benefitted by the order?

"That calls for a yes or no, if you will be kind enough.

"Mr. LAYTON. No, it doesn't.

"Mr. RAICHLE: 'Can you give me the name?'

"Mr. YOUNG. Unless he wants the names.

"Mr. LAYTON. He wants to know whether you were able to give him any names. He doesn't want the names now.

"The WITNESS. I could give him probably a thousand names or I could say——

"Mr. LAYTON. Then your answer would be yes?

"The WITNESS. Yes.

"Q. Give them to me.

"Mr. LAYTON. Would you like him to list now all of the names that he could think of?

"Mr. RAICHLE. Those that come to him.

"Mr. LAYTON. I assume he will have adequate time to answer that question.

"Q. Do you want to put your own at the top?

888 "Mr. LAYTON. I prefer you not to suggest the answers to him. He will give you the answers.

"Mr. RAICHLE. I hope.

"A. I think it benefitted every person in the country who is hurt by the operation of a monopoly. I think it specifically benefitted the owners of the newspapers who might suffer because of high prices for comic supplements—could be assumed to follow a monopolistic practice.

"I think it benefitted Greater Buffalo and Mr. Koessler's other companies because it permitted them to operate this plant, which is what they have been wanting to do.

"I think it benefitted the Government because it did not permit this plant to be operated in an unrestrained basis.

"I think it benefitted Atlantic Features and Southern Colorprint because it was not permitted to operate in an unrestrained fashion.

"That is all I can think of now, sir.

"Q. Then the names would fall within those categories?

"A. That's right.

889 "Q. Your name would be one of them?

"A. My name would be one of them although, sir, the record would show that Southern Colorprint and Atlantic have always felt that order, which I believe is number one, that the plant should not be opened at all until the adjudication of the major issue, because in opening the plant the whole pattern of the industry would be changed from the time the Government

entered suit against these defendants charging monopolistic practices.

"Q. Your reference to plan number one or order number one is of interest to me.

"You are familiar with these proposed orders?

"A. I have heard of them. My recollection is that order number one was they wouldn't open the plant at all.

"I may be mistaken, my recollection is that order number one, they would not be permitted to open the plant at all until the over-all situation was clarified by the Court decision.

"Order number two was to permit Sylacauga to open on a limited basis.

"Q. You would prefer, then, and you make the flat statement that Sylacauga not open at all; is that right?

890 "A. Yes, I would prefer that.

"Q. So that you would have a monopoly in the southern territory which Sylacauga would serve; right?

"A. It does not follow. In the case of Macon, I had no monopoly. I had the same transportation cost as King Features did from Wilkes Barre, which is a great deal further from Macon than is Newport News.

"Q. If you did not have the competition of Sylacauga in the areas where you are nearer and in closer proximity than International up in Wilkes Barre, Pennsylvania, you would have the competitive advantage which you swore to yesterday, isn't that so?

"A. It is the same sort of competitive advantage that Wilkes Barre would have and Dunkirk would have in soliciting business in the eastern part of the United States.

"Q. All right, but a competitive advantage, the same one you swore to yesterday; right?

"A. You are referring to it twice. Please elucidate.

891 "Mr. LAYTON: Indicate what part of the record you are referring to.

"Mr. RAICHLE: I could do it very easily, you know that. He testified all day long yesterday about the competitive advantage—you were the first one to use the term, you yourself.

"Q. Do you claim you did not have a competitive advantage; let's take it that way.

"A. I haven't claimed anything.

"Mr. LAYTON: We are simply asking if you would make a specific reference to the testimony that you are referring to.

"Mr. RAICHLE: Take the time of all these gentlemen here to hunt through the record in all the manifold places where they are?

"Mr. LAYTON: Could you phrase the questions in a less unobnoxious manner?

"Mr. FELDMAN: Let's go on.

"Mr. LAYTON: I think the only thing to do under the circumstances is just to let you operate in whatever manner you care to. However, I am going to protect Mr. Hornady, although from what I understand yesterday, you prefer he didn't have any counsel.

892 "That is about as straight as you get things.

"Q. I am going to be a little persistent about this, with no apologies to counsel or to yourself.

What is the last edition, where and when did you see our projections of earnings? Did you see them with Mr. Smith down at Southern Colorprinting as you said yesterday, or did you see them in Washington as you said today?

"A. I think you asked me yesterday when I first saw them. Now you are asking me when I last saw them.

"Q. No, nothing was said about last. What is the last edition of your version of where you saw them?

"Mr. LAYTON: Are you referring to the edition of sheet?

"Mr. FELDMAN: You straighten him out any way you want.

"Mr. LAYTON: Are you referring to that sheet you handed to him yesterday?

"Mr. RAICHLE: I am referring to the time when you saw our projections of earnings contained in our motion
892 papers.

"A. The last time I saw them, sir, is that what you mean?

"Q. Did you see them more than once?

"A. I saw them yesterday and I saw them in Washington and I think I saw them in Newport News.

"Q. Now let's go to the time when you saw them in Newport News, Page 62 for your ready reference, of this deposition, going over to Page 63.

"This is your answer, referring to Mr. Smith:

" . . . had mentioned that he had the figures and he was looking at them.

" Question: Did he show them, that he had them down there in his plant?

"Answer: Yes, and he was looking at them."

"Is that still the truth?"

"A. Yes, I think I saw some figures down there. Whether it was figures previously gotten up by the defendant or some new figures gotten up by the defendant, I don't know."

894 "I saw a sheet and as I said yesterday, I was not particularly interested in it."

"Q. Let's see what you said yesterday."

"Page 62: 'Let's get down to the visit to Mr. Feldman and these projections of ours which you and Mr. Smith were discussing. By the way, did you and Mr. Smith go there together?'"

"Answer: No, we were in separate planes. I went in the morning and he went later in the day."

"Question: You were discussing the matter with him before you left?"

"And then this part that I just read."

"Is that all true now as it was yesterday, if it was true yesterday?"

"A. Let me get that sequence."

"Yes, as I recollect, he mentioned the figures and was looking at them."

"Q. What was this talk this morning about Mr. Feldman came into the library in the Department of Justice, and as you phrased it, brought them to you, you looked at them and he snatched them in five minutes"

895 "A. I was there reading my deposition, sitting at a table. He came there and put a piece of paper that looks like that (indicating) on the desk."

"I looked at those papers for a few minutes. There was a lot of them. I couldn't read them all, I certainly couldn't study them all."

"In a few minutes he came back and said, 'I need these' and he took them away."

896 "Q. Did you recognize them as being the same papers you had been talking to Smith about before he went to Washington?"

"Mr. LAYTON: I would like to state at this time that in this reference on Page 72 there is no mention of papers. There is a reference to a discussion between Mr. Hornady and Mr. Smith. If you want the question read back, you can answer it."

"Mr. RAICHLE: Just to see how inaccurate you can be when you try, Page 62; 'Question: Let's get down to the visit to Mr."

Feldman and these projections of ours which you and Mr. Smith were discussing.' Do you see that?

"Mr. LAYTON: That is your question and is directed toward the discussions between Mr. Smith——

"Mr. RAICHLE: The record will speak for itself. You can straighten him out—coach him or whatever you want.
897 Let us get along about this.

"Mr. FELDMAN: For the record here, the testimony here does not show that he looked at this particular piece of paper down in Newport News which you refer to as Defendants' Exhibit 1."

By Mr. RAICHLE:

"Q. Did you see our projections before you went to Washington or didn't you? Yes or no?

"A. I saw some figures on a sheet of paper. Whether they were your projections, your first projections or your second projections, whether it was the same sheet I looked at yesterday, I don't know.

"Q. They were operating figures, were they not?

"A. They were purporting to be, sir.

"Q. You looked at them enough to form an opinion as to the sales expense; you are telling us that?

"A. Yes.

"Q. You discussed that with Mr. Smith?

"A. Yes.

"Q. You discussed it down South before you came to Washington, isn't that so?

898 "A. With Mr. Smith.

"Q. You remembered that yesterday and you remember it today; isn't that true?

"A. There was one thing that stood out.

"Q. What was the point about this inquiry in the Department of Justice that the paper was snatched from you in five minutes? What was the point about that? Were you seeking to create the impression that you did not have our figures?

"Mr. LAYTON: I think those questions were asked by Mr. Feldman. I don't think the witness has to comment on the point of the questions asked by government counsel.

"Mr. RAICHLE: I guess you are right about that.

By Mr. RAICHLE:

"Q. Yesterday I asked you more than once, if you will please recall, as to whether you had discussed this order of June 22,

1962 with prospective customers and newspaper publishers. Do you remember my asking you that?

"A. Yes.

899 "A. I also remember telling you that since June 1962 that I have called on only a few publishers and aside from telling one of my stockholders about a letter and a few others of my stockholders who I have seen in New York or at White Sulphur Springs at directors' meetings, I have not discussed this with the few newspapers that I have seen since June 1962.

"Q. This morning you told us that this order which the lead article in the trade paper——

"A. That is right.

"Q. Circulated among all these customers, publishers, if you please?

"A. That is right.

"Q. It was a subject of wide publication and wide discussion; isn't that true?

"A. I think it was widely published. I am sure a lot of people talked about it.

"Q. You told us this morning that when you called on customers, you talked to them about their grandchildren and things like that? Do you remember?

"A. Yes, sir.

900 "Q. Was it your statement that you would talk to them about their grandchildren, but you would not talk to them about this order?

"A. It was not my statement. It just so happened that in those calls I made since that order, the subject of the order did not come up.

"Q. Did you take the benefit of what advantages the order gave you?

"A. No, sir. I have not been down in the area of Sylacauga since that order. I think my trip to Macon was prior to the order.

"Q. Is there anything you told me yesterday that you would like to correct?

"A. My recollection was very poor yesterday regarding when I saw these papers, but I talked on the telephone to Mr. Smith last night.

"Q. Who called you?

"A. I called Mr. Smith.

"Q. What did you say to him?

"A. We talked about how things were going at the plant. I told him what happened—I mean, a cursory description of what happened at the hearing here yesterday, and asked him how his wife was and how he enjoyed himself at a meeting down in Charlotte—Wednesday, I think it was. I told him this matter of figures had come up and that I thought that I had seen those—that he had shown me those figures. He said those
901 were some earlier figures, some earlier projections. I didn't get those figures until I went to Washington.

"Q. That is what he said to you?

"A. Yes, sir.

"Q. Have you read yesterday's deposition?

"A. Very little of it. I didn't have time this morning to read it all.

"Q. Were you reading it with Mr. Feldman?

"A. I was reading in Mr. Layton's office this morning.

"Q. Do you know of anything in the deposition that is incorrect?

"A. I saw a few things that I think were probably typographical errors or errors in the reporter hearing what you said or what I said that I would want to correct before the deposition went in, but they were not material and important, I don't think—as I recall them. I have forgotten what they were. I did say to Mr. Feldman, 'This is not right. I didn't say this.'

"Q. Then you were talking to Mr. Feldman?

"A. I beg your pardon—to Mr. Layton.

"Q. Just one more subject matter. You said something about Birmingham yesterday, didn't you?
902

"A. Yes, sir.

"Q. Do you remember what you said?

"A. No, sir. I have forgotten what I said.

"Q. Can you service Birmingham if Sylacauga is operating?

"A. I could print for them, if that is what you mean, sir.

"Q. If Sylacauga was operating and transportation costs were passed onto the customer, then certainly in Birmingham, in Chattanooga, Huntsville and in Montgomery, there would be substantial savings to the publisher, isn't that true?

"A. If he were given the benefit of the savings and the price he is paying would not increase and so on, subject to those qualifications.

"Q. Assuming that all of the savings were passed down to him, the savings would be substantial, isn't that true?

"A. Yes, sir, they would be fairly substantial, I think.

"Q. As long as this order continues to operate, those savings cannot be effective; isn't that true?

908 "A. Those savings which are based on the assumption that they would get them, could not be effective.

"Q. Do you know of any good reason why the publishers in those towns which I have just read should pay a higher price through a denial of transportation savings so that you can operate without the competition of Sylacauga?

"A. No, sir. I don't know of any reason why they should have that attitude.

"Mr. RAICHLE: That is all.

"RE CROSS EXAMINATION

"By Mr. FELDMAN:

"Q. Yesterday, Mr. Hornady, you were shown a booklet which has been marked as Defendants' Exhibit A, I believe, which contained projected figures. Just referring to that booklet, when was the first time that you saw that projected figure as contained in the booklet marked Defendant's Exhibit A?

"A. Mr. Feldman, I don't remember seeing any booklet yesterday.

"Mr. LAYTON: Could you show the witness Defendants' Exhibit A?

904 "Q. Mr. Hornady, I show you Defendants' Exhibit A and ask you now when was the first time that you saw this booklet or series of pages here which contains projection or comparative statement of projection of annual sales and net income, 'loss' in a bracket and Note 1?

"A. I don't think I ever saw that booklet. I remember that a sheet of paper was handed me yesterday. When I have seen previous sheets of paper, I don't even know that I ever saw that exact sheet of paper because, as I say, the only thing that I particularly noticed were these sales and travel expenses.

"Q. I am referring now to the whole booklet. Did you ever see this before?

"Mr. LAYTON: Why don't you ask him whether he ever saw that before?

"Q. Referring to this exhibit, did you ever see this before you came into this deposition yesterday?

"A. No, sir.

"Q. You no doubt recall seeing that?

"A. No, I don't recall seeing that. I see Price Waterhouse on that. I don't recall any booklet with Price Waterhouse's name on it.

905 "Q. Do you recall seeing the figures set forth on the page like this?

"(Mr. Feldman hands document to the witness.)

"A. I recall seeing a page like this, a sheet like this containing figures, but only once that I can identify as being the same sales expense and administrative salaries.

"Q. Where was that when you first saw a sheet resembling that?

"A. I think the first time I saw a sheet with those three items on it was a sheet that Mr. Smith showed me. That may have been his typing up of notes.

"Q. In other words, you do not know then whether it was the same sheet that is not before you in Defendants' Exhibit A; is that right?

"A. No, sir.

"Mr. FELDMAN: I have no further questions.

"Mr. RAICHLE: I have no further questions. As I understand it, you do not want to waive the signature in the deposition?

"Mr. LAYTON: No; I want him to sign it.

906 "(Whereupon at 12:30 p.m., the deposition was adjourned.)"

Mr. FELDMAN: May I be heard just one moment on the remarks of Mr. Climenko? First of all, the deposition points out that Mr. Hornady joined with Lang Features which is a southern agent, Color Print Corporation, in 1956, and that is a pretty long time for any knowledge about prices to be of such an advantage to him. The second point is when we are talking about fairness we are talking about fairness in regards to his selling. The question is, did Mr. Hornady indulge in any predatory practices, tie-ins, transportation absorptions, or any of the other factors? He certainly did not and there is nothing in the deposition to indicate that he did that. We further claim that the order of this Court entered June 22nd, 1962, has had
907 a salutary effect as far as the industry is concerned and for this reason, people competing down there know that any transaction they are going to enter into may well become a subject of judicial scrutiny and so tie-ins which previously existed between the featureites and the printing have, to a large extent, diminished, and this is one of the factors—in fact the

main factor—that permitted him to get this business. Heretofore he could never get an account in Norfolk, Virginia—something like twenty, twenty-five minutes from Newport News.

Mr. CLIMENKO: May I respond to just one point Mr. Feldman has made, because it seems to me that his effort proves this utility of the effort. He says that Mr. Hornady obtained this business without resorting to predatory practices. I think that begs the whole question. Mr. Hornady obtained this business, and I heard this testimony twice; once when it was given live and again today. Mr. Hornady has said that he got this business only because he had a geographical advantage. That was the only basis of his getting this business. Now why did he have a geographical advantage? He had the geographical advantage because, Your Honor has said by an order of this Court, and we are under the obligation of living with it and obeying it, Your Honor has said that we could not compete with Mr. Hornady in an effort to hold our business. And how has that happened? Because the Department of Justice comes into this Court, beginning in April of 1961, it fights the Civil War inside this case because it doesn't know whether it is tied to the north or the south, but it finally asks for an order which says that our business is frozen in the northeast; that we cannot move it, and when we can't move it, it is there for Mr. Hornady to pick up, and that is the answer to it and that proposition cannot be answered and has not.

Mr. RAICHLE: May I make one observation Your Honor?
The COURT: Yes.

Mr. RAICHLE: There is an old saying that the truth comes out even in affidavits. This morning Your Honor inquired as to whether or not, in the course of Mr. Hornady's solicitations, he exhibited or made mention of Your Honor's order, and Mr. Feldman with more zeal than responsiveness, evaded rather adroitly a direct answer to Your Honor's question but the atmosphere of his answer was, "Oh no, no, Mr. Hornady wouldn't do a thing like that." I asked Hornady repeatedly if he had mentioned to the persons who were the subject of his solicitations and, in the course of his solicitation, the fact that his competitors were under restraint. Grudgingly he admitted they had talked to some of them about it. He couldn't remember, as he put it, a specific conversation, with

that facile forgetfulness of his, but it did develop that he had mentioned to certain whom he called by name. Now Mr. Feldman says that the order was of salutary effect because everybody in this district in the south knew about Your Honor's order. How did they know about it? Does it make any difference? Why they knew about it because it was published in the trade papers—in haec verba. It was a subject of conversation by everybody. It was an important subject of knowledge,

911 and more importantly was a competitive advantage availed of repeatedly and is being availed of today, and was on the day that Judge McMahon found that the evasive, pampered and privileged, harbored and spoonfed Hornady was a fugitive from our subpoena. Now right here in this finding—and I offer it in evidence as a part of these proceedings—Judge McMahon found in these words that Hornady was evading the subpoena. He found that he had been served with the subpoena in the face of an affidavit by Hornady that he had not. In the face of a representation by his lawyer that he was too ill to appear. Now this man has availed himself of a competitive advantage to which he is not entitled. He has shown proclivities to flout the process of the Court when it is directed to him, but to get under the cover and the haven of it when it is to his

912 advantage, and I think the Department of Justice is in big business—in low business—to put their stamp of approval on this man's course of conduct and to offer to him the power of Government to destroy the company, International Color Printing which they told Your Honor must be preserved for the benefit of the citizens of Wilkes-Barre and the people who worked in that community.

The COURT: Let's call the witness now. I don't need any more comment on this.

PAUL LYNDE, called as a witness and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. FELDMAN:

Q. Will you please state your name again for the record?

A. Paul Lynde.

Q. Where do you reside, sir?

913 A. San Bernadino, California.

Q. And what business, if any, are you engaged in?

A. I am employed as business manager of Acme Color Print Company.

Q. What exactly does your job entail?

A. Under the corporate president, I have responsibility for the total operation.

Q. Are you familiar with all the aspects of production and sales by Acme Color Print?

A. I am.

Q. And how long have you held this job, sir?

A. It will be ten years January 3rd of 1963.

Q. And prior to that time what type of work did you do?

A. Newspaper accountant.

Q. What business does Acme Color Print Company engage in?

A. Acme is a printer of colored comic supplements for newspapers.

Q. Is it engaged in any other type of business?

A. No, sir.

Q. Now presently what is the volume production of Acme?

A. Seven million seven hundred thousand four-page standards per week.

914 Q. How long has Acme been in business?

A. It is now in its thirty-eighth year.

Q. Will you please define for us the facilities of Acme for printing color comic supplements?

A. Well the operation occupies a one-story building 77,000 square feet; it has three major operating departments; a stereotype room, press room and a shipping or mail room. In addition there is an office force, a maintenance force both for equipment and the building, and a warehouse force.

Q. How many employees does it have?

A. 110.

Q. When you say 110, does that include the administrative employees also?

A. Yes, that is true.

Q. As to the presses, how many presses?

A. Four presses in operation at the present time.

Q. Now how many people do you have in the administrative end of the business?

A. The president, myself and two female clerks.

Mr. RAICHLER: I'm sorry, what?

The WITNESS: The president, myself, and two female clerks.

By Mr. FELDMAN:

915 Q. Does Acme employ any salesmen at all?

A. No, not as employees.

Q. Who takes care of the sales end at Acme then?

A. The president and myself do virtually all of the selling directly.

Q. What states does Acme have accounts or does it sell in?

A. Well, our customers are spread over the eleven western states, plus some in the State of Texas. We do not, by any means, print for all the newspapers in that area.

Q. How many newspapers do you print for presently?

A. 92.

Q. Now I believe you mentioned something about the presses, there being four. Is that correct, sir?

A. There are four presses.

Q. Now as to the four presses, can you give us a brief description of each?

A. The smallest press of the four is what is called a single width, a Decktor type. It is five decks high and two plates wide. Two presses are quite similar to each other, they are four plates wide and four decks high. These are known as double width presses. The fourth press also is four plates wide but is not a Decktor type press. It is what is known as a unit
916 type press, and it consists of four units.

Q. Now as to the four presses you have just described, what is Acme's present work schedule?

A. Well we operate all four presses, two shifts per day, five days per week. That is one day shift and one night shift.

Q. Now what does the term "Manning the presses" mean to you?

A. Manning refers to the number of persons necessary to operate the press.

Q. Will you please describe for us the manning requirements at Acme in operating the four presses?

A. Well, there is some variation. The small press is required to be manned by either five or seven persons, depending upon what is being produced at the particular time. The other three presses, or the larger ones, are all required to be manned by either six or eight persons, depending on what is being produced.

Q. Now manning, how is that determined? Over any given period of time, at Acme?

A. By labor negotiations. It is a subject of contractual agreement.

Q. And are wages also a subject of labor negotiations?

917 A. Oh, yes, manning, hours, working conditions are negotiated all at one time.

Q. Now, after your labor costs at Acme, is there a relationship between the two, namely, wages and manning?

A. Oh, very definitely. Do you mean which is more important?

Q. No, is there a close relationship?

A. Yes, they are negotiated. There is an interaction in negotiations. A higher—

Mr. RAICHLE: I can't hear him.

Mr. FELDMAN: Suppose you speak up.

The WITNESS: I didn't get that word. What is the word?

Mr. RAICHLE: Manning is like manning a ship? People running it, is that right?

Mr. FELDMAN: That is right, number of people.

By Mr. FELDMAN:

Q. Have you participated in labor negotiations on behalf of Acme?

A. Yes.

Q. Now in such labor negotiations, are the salaries or wages of printers who do colored comic supplement work at
918 Acme, is that considered a separate industry?

A. No. Well, the contracts apply only to Acme.

Q. But is it considered a separate industry?

A. No.

Q. Is it considered part of any industry?

Mr. RAICHLE: I don't want to object but we seem to be a little pressed for time but "considered"—considered by whom, the Department of Justice?

Mr. FELDMAN: I ask the man in labor negotiations. That is all I am talking about, the labor negotiations at Acme.

The COURT: From a corporate standpoint?

Mr. FELDMAN: That is right.

The COURT: Answer that.

The WITNESS: Yes, it is affected by and considered part of another industry.

By Mr. FELDMAN:

Q. Now what other industry is that?

A. Printing and specifically newspapers.

919

By Mr. FELDMAN:

Q. Now, based on your experience in labor negotiations, is there any correlation between the newspaper industry and the wages and hours of the color comic supplement workers or printers at Acme?

A. Yes, very definitely.

Q. Will you tell us what that relationship is?

A. Well, in California, in the case of Acme Color Prints, specifically there are clauses in our labor agreements which will adjust our wages, the wages in effect at Acme automatically without negotiations in the event that during the term of that contract there is an increase in the newspaper scale in the City of Los Angeles.

Q. Now, at the present time what is the total capacity or maximum capacity of Acme as to the volume of production?

A. 14,000,000 fours a week.

Q. At the present time what percentage of that maximum production are you using?

A. Slightly over half; about 55 per cent.

Q. Mr. Lynde, I show you Exhibit A which is attached to the moving papers in this motion and ask you whether pursuant to my request you studied the projections contained therein and compared the same with Acme's course in operations?

A. I did.

Q. Now, in making your comparison, did you use any work sheets at all?

A. I did.

Q. Do you have such a work sheet with you?

A. I do.

Q. Just give me the work sheet.

Mr. RAICHLE: May I make one interruption, Your Honor, a matter of projections. Our Exhibit A, projection number one says that based on a production, annual production, since we are all talking in terms of weekly volume of fours I am wondering if it wouldn't be informative and helpful to your Honor to note that the top of projection one that the weekly of fours which resulted in the \$178,000,000.00 figure is 3,434,000, mainly the amount permitted under your Honor's order, and the weekly volume of fours resulting in the annual volume 409,957,600, in column 2 is 7,830,000 fours a week. Excuse me.

921

The COURT: All right.

Mr. FELDMAN: I ask that this piece of paper handed over to me by the witness be marked as Plaintiff's Exhibit 1 for identification.

(Whereupon, paper was marked as Plaintiff's Exhibit G-1 for Identification.)

The COURT: That column 2, Mr. Raichle, is roughly what Acme says?

Mr. RAICHLE: I think that is what Acme says.

Mr. FELDMAN: Yes, that is correct.

By Mr. FELDMAN:

Q. Now, looking at Exhibit A and looking at the headings as to volume of production, what comparison, if any, can you make?

922 A. Between Acme and projection two, you mean?

Q. Suppose you tell us.

A. Projection number one—I don't have Exhibit 1, I have my work sheets.

Q. I see. Just base it on what you remember then.

A. Projection number one is approximately one-half the volume of work being done at Acme and projection number two is almost equal to Acme's production. I believe one million per year between Acme's production and the production shown on projection number two.

Q. Now, did you go down the respective items set forth or the categories, as to production costs and selling costs in Exhibit A?

A. I did.

Q. And did you compare them with the costs and operations at Acme?

A. With reference to projection number two, I did compare them, yes.

Q. Will you start at the top and go down with each item and tell us what, if anything, you found?

Mr. RAICHLE: I would like to record an objection. If this is impeaching our projections, if that is what is intended to
923 be done with this testimony, he hasn't laid the basis to compare it with Acme without making a basic showing that costs at Sylacauga would be comparable and negatively in existence, the facts and circumstances to make the comparison; I object to it.

The COURT: I am fully aware of the conditions you are running into down there. It is a new business and it is not well-established, I know that, but I will receive it, Mr. Raichle and let you inquire as to the force it has. I know there are many other considerations.

By Mr. FELDMAN:

Q. All right. Going now to sales; what, if anything, did you find or determine?

A. The annual sales revenue shown in Projection No. 924 2 is approximately one-half million dollars less than the current annual sales revenue of Acme Color Printing Company.

Q. What, if anything, do you attribute that to?

A. I don't believe the figure shown in Projection No. 2 is meaningful.

Mr. RAICHLE: What?

The WITNESS: Meaningful.

Mr. RAICHLE: I move to strike it out; meaningful to whom?

Mr. FELDMAN: I object, your Honor, to that remark. This man is as fully qualified as anyone here to talk about it.

The COURT: I will sustain the objection.

Mr. FELDMAN: I am going to ask the witness to read this.

The COURT: I consider that is not a fair expression of the corporate business. Have you ever seen the plant in Sylacauga?

The WITNESS: No, sir.

The COURT: You know nothing about the business setup?

The WITNESS: Only from the records of this case.

925 The COURT: All right.

By Mr. FELDMAN:

Q. Suppose you tell us the reason that you have, if any?

A. Redeeming here the projection in the sense it is an estimate, it is no more a standard procedure in any work-making standards or estimates to make optimum use of the information at hand, all of the best possible information you can use. I am aware that any printing done at Sylacauga would be transferred from some other printing plant, that is understood. Projection No. 2—

Mr. RAICHLE: I object to that, if your Honor please, how can he make a statement like that?

The COURT: You mean you assume?

The WITNESS: I do make that assumption.

Mr. RAICHLE: That is a lot different than a man under oath saying, "I am aware it will be."

The COURT: In your projection or analysis you are assuming certain facts?

The WITNESS: Yes.

926 The COURT: All right, you may proceed.

The WITNESS For the purpose of this comparison I am assuming that printing under Projection Number 2 would consist of jobs now being performed at other printing plants and therefore the specific prices being charged for those jobs that exist and are available and according to the notes attached to Projection 2, they were not used, therefore, the best information was not used.

927 Q. Now, in the event specific runs were mentioned, or assuming such runs were mentioned, outside of the revenue, would any other information be available to you?

A. Yes, very definitely. The circulation of a newspaper, as well as the number of pages being printed in its supplements are both of major importance in determining cost and therefore in determining prices; also, in addition to the circulation and the number of pages, the actual page-by-page makeup of a group of runs being printed in the particular plant could be of great importance.

Q. Now, going to the next item, what item would that be?

A. The next figure on Projection 2 refers to payroll.

Q. Now, what did you find in analyzing that?

A. First of all, to make a comparison with Acme with respect to the payroll, as well as certain other figures in Projection 2, I found it helpful to make certain rearrangements. I didn't change the amount of any figure or of the total but I made regroupings in order to make comparisons possible.

Q. What regroupings did you make?

A. In the case of payroll I used the sum of the first two items in Projection 2 under cost; that is, the payroll figure
928 plus the benefits figure, a total of \$404,000 and some odd dollars.

Q. Having combined the two, what, if anything, did you find or determine?

A. That that figure is approximately \$300,000 per year less than the comparable for Acme Color Print Company.

Q. Can you estimate what you think figure number 2 should be, based on your experience?

A. I think it should be lower yet. I think it should be approximately fifty percent of the comparable figure at Acme.

Mr. RAICHLE: What figure are you talking about?

Mr. FELDMAN: Payroll and employee benefits combined.

By Mr. FELDMAN:

Q. I will ask you again; based upon your experience, what do you think the figure should be in Projection 2 as to payroll and employee benefits combined?

A. \$380,752.00.

Q. How do you arrive at that conclusion? What are the reasons for that?

929 A. I have assumed that the six runs to be printed under the figure shown in Projection No. 1 would be typical in size to the runs to be added for purposes of Projection 2. What I am saying, I have assumed we are dealing with circulation in large numbers, numbers of large circulations, this is the assumption. With that assumption, and with the information I also have from the record in this case about press management at the Dunkirk plant, about stereotype production quota requirements, and about the speed of the press installed at Sylacauga, together with the size of the circulations of the newspapers; all of these factors operate to reduce labor costs as compared to Acme Color Print Company. Acme operates four printing presses. It serves 92 newspapers. The volume of production in Production 2, which would be equal to Acme, based on my assumption, as to the size of the newspaper, would involve something like 15 or 20 newspapers. This would, by reason of requiring fewer make-readies and permitting longer press runs, reduce the hours of press operation by about forty-five percent as compared to Acme Color Print. In other words, what I am saying, is that the printing could be done at Sylacauga

930 under Projection 2, under the assumption I made, could be done in half the time it takes us to do the same printing at Acme. This is a major factor in my conclusion that labor costs should be one-half.

Mr. RAICHLE: One-half of what?

The WITNESS: One-half of Acme's.

By Mr. FELDMAN:

Q. Going to the next breakdown under productions costs; what would that be?

A. The next item is newsprint cost.

Q. Did you make a comparison to Projection 2 there?

A. I did.

Q. What, if anything, did you find?

A. The figures shown in Projection 2 is approximately equal to the newsprint cost today at Acme Color Print.

Q. Do you accept the figure in Projection 2 based upon Acme's and your experience?

A. I think it should be lower.

Q. Will you tell us the reasons why?

A. The price of newsprint across the county is fairly uniform, \$134.00, \$135.00 a ton. Wherever the printer may be located with respect to the mill, this is generally true, and that price would be at the printer's plant. In other words, the mill pays the freight to the printer's plant. The Sylacauga plant is in the immediate area of a newsprint mill. I assume newsprint from that mill would be used in Sylacauga. Based on that assumption, there certainly should be some savings because of the proximity. This is a matter of general knowledge in the printing business, but I can't cite any specific instances, but I know—I am satisfied that it is possible, that it is occurring, that printing plants which are located within up to six or eight hours by highway of a mill are able, by taking delivery of the paper at the mill rather than at the plant, and paying for the transportation costs themselves.

The COURT: Isn't that directly contrary to the evidence in this case?

Mr. FELDMAN: I don't think so.

Mr. RAICHLE: Yes, it is.

The COURT: I think I explored that. I expected that theory, that it might be an advantage there. I was told it doesn't make any difference if it comes from New Brunswick or Sylacauga.

Mr. FELDMAN: That is the point he explained before, when he took the stand, the price would be more when it goes to the plant than if you make arrangements to pick it up yourself. I believe the testimony of Mr. Clinton bears the point out. He said he didn't look into it at all, you could get a concession because of that. I have an affidavit here. Mr. Raichle has a copy of that, I got it this morning. I will submit it to you. It is from the Coosa River people, telling what they have done in the past with other customers.

The COURT: All I remember is that it is a strange business, that pulp business, newsprint business. It certainly seems to

be controlled in some manner other than by the ordinary laws of supply and demand and location. We will pass that.
 933 That is one segment of your analysis.

By Mr. FELDMAN.

Q. Now, based upon what you have told us, and your experience and knowledge, did you reach any determination as to what you think the figure should be in Projection No. 2 as to newsprint?

A. Yes. There is one other factor involved in that decision however, that I didn't mention.

Q. Will you mention that?

A. Apart from the price of newsprint or the cost of it at the printer's plant, there is the question of consumption rate of newsprint in pounds per thousand fours, and again I am assuming these are comparatively large press runs as compared to Acme Color Printing. If that is true, the waste factor will be lower, in which case the rate of consumption will be lower. Therefore, if both the cost and the rate of consumption are lower at Sylacauga as compared with Acme, the amount of money spent for the newsprint for the same production would be less.

Q. Now, have you reached any determination as to what you think the figure should be in Projection No. 2 as to
 934 newsprint based upon what you related here today?

A. Yes, sir.

Q. What figure have you—

Mr. RAICHLE: I submit he should tell how he did it.

Mr. FELDMAN: He just told you how he did it.

The COURT: He was making certain assumptions.

Mr. RAICHLE: He must make an assumption as to the degree of waste and the degree of consumption.

The COURT: Can you state that?

The WITNESS: Yes.

The COURT: Do that.

The WITNESS: I assume a cost at the printer's plant of \$132.00 per ton.

Mr. RAICHLE: What?

The WITNESS: \$132.00.

Mr. RAICHLE: There is no basis for such assumption.

The COURT: He is expressing an opinion. This man's opinion is apparently based on some experience.

The COURT: You have an affidavit, if you have it, that doesn't justify that statement.

935 Mr. FELDMAN: I never looked at it, it just came in.

Mr. RAICHLE: Look at it now.

Mr. FELDMAN: I want to know his opinion.

Mr. RAICHLE: Here is a man who says he has an affidavit that pertains to this thing. If that affidavit is in conflict to what he is going to say—

The COURT: Go ahead, state in your opinion—you think the cost of the Sylacauga plant was \$132.00 a ton, is that right?

The WITNESS: That is my best judgment.

The COURT: Go ahead.

The WITNESS: I assume the consumption rate of forty-seven and one-half pounds per thousand four-page standards.

Mr. RAICHLE: Would you give me that figure?

The WITNESS: Forty-seven and one-half pounds per thousand four-page standards. Applying these figures to the production gives a newsprint cost \$30,000.00 per year less than the figure shown on Projection 2.

936 By Mr. FELDMAN:

Q. Going to the next item, namely ink; did you analyze the figure under Projection No. 2?

A. I compared it with the cost of ink at Acme.

Q. What conclusion did you reach?

A. It is somewhat lower in dollars and in cents per thousand both, than the cost at Acme.

Q. Based upon your experience, do you think the figures should be otherwise in Projection No. 2?

A. No, I do not. It is my understanding in the general course of our business that Greater Buffalo Press has some connection or some interest with the company which makes ink and certainly they would use a lot of it. So I think it is reasonable to assume their cost would be lower than ours.

Q. You have no quarrel with that figure?

A. Not in Projection No. 2.

Q. Did you examine the figure in Projection No. 1 as to ink?

A. I did.

Q. Did you examine the note in Exhibit A regarding that Projection No. 1?

A. I did.

Q. What was your determination in regard to the figure in Projection 1 as to ink?

937 A. I disagree completely with the statement in the note to the effect that there is a greater wastage of ink when the press is operated at less than capacity than there is when the press is operated at capacity. I think the figure in Projection 1 is wrongly related to the one in number 2.

Q. Do you have any reasons for that conclusion?

A. Well, I know if a press is operated at less than capacity in terms of amount of time operated, that is, fewer hours than it might be, it doesn't use any ink while not running; it doesn't waste any ink. Ink does not evaporate. I know if the press is operated at less than capacity in terms of the number of plates mounted on it, this ink distribution is changed so that the ink is put on that area of the press where plates are mounted; there is no waste there. There would be a greater waste factor on ink on shorter runs than compared with longer runs.

Q. How would that come about?

A. Because of the waste factor, the number of the copies wasted during registration would be approximately the same, but total production being less, the waste factor per thousand would be much higher.

Q. Going to the next subject, what is that on your 938 list?

A. We have supplies.

Mr. RAICHLE: What did he say the \$59,838.00 figure should be?

Mr. FELDMAN: I didn't ask him that.

By Mr. FELDMAN:

Q. I will ask you, did you make any projection or estimate as to what you think the ink item should be in Projection No. 1?

A. Only in the sense that I feel the ink cost per thousand would be the same under both total productions, assuming that the size of the runs were about the same.

Q. Now, what is the next subject matter you considered?

A. The next item is supplies, and here again I regrouped my group of supplies with freight.

Q. Why did you do that?

A. There is some difference in accounting systems. It is the common practice in some plants to consider freight on incoming supplies as a separate cost, labeled freight. In other operations the freight on incoming supplies is added to the cost of the supplies. It is classified as a supplies cost rather than

939 freight. In order to avoid comparing, I put them together.

Q. Having combined them together, what determination did you reach as to the combined total figures?

A. The figures twice the comparable figure for Acme Color.

Q. What, if anything, did you attribute that to, based on your experience?

A. I think the figure is wrong.

Mr. RAICHLE: If Your Honor please, I don't like to object, but how in the world can we make proof that way? Your Honor understands this freight item we are talking about is incoming freight, supplies coming into the plant, not the shipment of the 940 fours of the color comics supplements. How can we compare a place undescribed in California with these two places. If he can do it, there should be a basis laid for it that he has made in examination, that he knows from what point the incoming freight in each instance is coming from, what the quantity is, at what rate, under what circumstances, just to say, I think that is wrong—

The COURT: I assume he is going to give us the basis for it?

Mr. FELDMAN: He will, but may I point out, this projection is based upon assumptions and estimates. This is right in the front, "Reliability of which is dependent on future events and transactions. As independent accountants we are unable to express an opinion on these projections." What I am saying to the Court is this. There is an issue of fact as to opinion or as to estimates. He is entitled to his opinion, that is all it is. I am going to ask him what the reasons are. All these objections as to why he can't give his opinion I think only go to the probative value that the Court should place upon the opinion, nothing more.

The COURT: You may continue.

941 By Mr. FELDMAN:

Q. Going to the two items which you combined, namely, freight and supplies, would you give your reasons which made you reach the determination that Projection No. 2, as to the two combined items, was higher?

A. I think it is too high. I don't think the freight and supplies costs would amount to that much money.

Q. At Acme, what items are considered freight, what items are considered supplies?

A. Generally speaking, we include freight as a cost of the supplies itself. The freight on the supplies is part of the cost of the supplies.

Q. In other words, this is not freight on supplements you are shipping out?

A. No.

Q. What other matters did you consider under supplies?

A. It was to avoid confusion on that point that I combined them.

Q. Well, at Acme, what are considered supplies?

A. Stereotype, for example.

Q. Would that include the metal, the nickel used in the stereotype operation?

A. Both.

Q. What item would have freight applied to them at
942 Acme?

A. Almost all supplies coming in would have a freight cost. Very few things are bought F.O.B. our plant. Most things are bought F.O.B. seller's plant.

943 Q. Now, based upon your experience in the industry, do comic color supplement printers, to your knowledge, use the same supplies in the printing supplements?

A. The major supplies, yes. For example, newsprint constitutes 55 to 60 per cent of the cost of the finished supplement. Everybody uses newsprint.

Q. Now, what is the next item you considered?

A. The next item on the Projection was depreciation.

Q. Did you make any comparison of the figures in Projection No. 2 as to the cost at Acme of the same items listed there?

Mr. RAICHLE: If your Honor please, I object to that as irrelevant. Now, depreciation is an accountant's device. It is a reality, however, but it is related to the assets involved in a particular operation and, if I owned the Lafayette Hotel I am making a projection and one of the items is depreciation, and somebody else owns the Statler—five times as big—and the one on depreciation dollarwise is bigger than the other.

944 it is of no relevance at all. The depreciation figure is directly related to the one and only thing it can be related to; the assets being depreciated.

Mr. FELDMAN: May I be heard?

The COURT: I don't think it is necessary. I understand your point but there is a note here by your accountant with respect

as to how the depreciation was arrived at. I expect you read that.

The WITNESS: I did.

The COURT: And you, at least, are generally familiar with the type of things that are being depreciated in this plant?

The WITNESS: Yes, sir.

The COURT: I understand your point. It goes to the question of the weight of this evidence and I expect you will have your usual searching examination as to that point. All right.

Mr. RAICHLE: To the extent that I can make it so,
945 I will.

By Mr. FELDMAN:

Q. Mr. Lynde, will you tell us what you found?

A. Well, to begin with, the investment and equipment indicated in the notes, \$390,000.00, but the depreciation figure is based on investment of 500,000; 110,000 yet to be expended. In other words, apparently the plant is not ready now to print. There is still more equipment to be installed. On the basis of \$500,000.00, ten-year life, \$50,000.00 a year is the proper charge. The only comment I have is that the depreciation at Acme Color Print Company, on an investment of \$475,000.00 is \$23,600.00 per year, slightly less than half. The difference is accounted for by the longer life used at Acme Color Print Company. We use a much longer life than ten years. The reason we use longer life is that we want our costs to be as realistic and as low as we can make them and we think printing presses last longer than ten years, among other things.

Q. Now, based upon this method used for depreciation at Acme, and only the method used at Acme, what figure, if any, would you get in Projection No. 2?

946 A. \$25,000.00.

Q. Now going on——

Mr. RAICHLE: Now, that can't possibly be right, on the face of it.

The COURT: I am not accepting these as facts you know.

Mr. RAICHLE: But I think; could I just——

The COURT: I do think that it would be helpful to the Court to have some basis other than the unique practice of Acme of running the depreciation over a longer period. I assume there is more solid grounds than that.

Mr. RAICHLE: I know I shouldn't argue——

The COURT: I say that that is up to counsel, but the statement of \$25,000.00 based upon Acme's history of depreciation over a longer period than ten years, that isn't the question to me at all.

By Mr. FELDMAN:

Q. Do you have any industry knowledge as to how
947 the depreciation is taken in the other parts of the printing industry?

A. Yes.

Q. And will you tell us what your knowledge is?

A. I know there is wide variation in practice. There is newspapers and printers. Generally speaking, I think the newspaper publishers have tended not to accelerate depreciation. There are some exceptions, but generally speaking the practice of the trade is similar to that at Acme Color Print Company.

Q. And how long a period do you use at Acme?

A. We do not use a composite rate. By that I mean, different items are depreciated over different periods of time, depending upon the item itself. For example, a printing press, perhaps fifteen years; a building, perhaps twenty-five years; a typewriter, perhaps five years, so on.

Q. Now, going on to the next item, what item did you examine?

A. The next item is repairs.

Q. And what, if anything, did you find in regard to repairs—I guess machinery and equipment, is that correct, sir?

A. Yes, sir.

Q. Now, what did you find?

948 A. The figure of \$45,000.00 for Sylacauga compares with \$12,000.00 for the current year for Acme Color Print Company.

Q. Now, this difference, what if anything did you attribute that to?

A. I think the Projection No. 2 figure is too high.

Q. And how did you reach that conclusion? What are the reasons?

A. Well, there are several. There should be, I think, a closer comparison with Acme for several reasons. We are operating more smaller printing presses. The chances for breakdown and repair and amount of wear should be somewhat greater. In the case of Sylacauga, we are talking about a comparatively

unused plant. Repairs and expenses in the initial year or two after perhaps a few weeks of what we call getting the bugs out, should be comparatively low, as compared to later years after the equipment has been used more. I just cannot conceive of there being \$45,000.00 of repairs in the first year.

Q. Did you reach any estimate of what you think the repairs should be?

A. I didn't specifically, except in this sense.

Q. Pardon?

949 A. I did not specifically, except in this sense. I arbitrarily said that the difference between the two operations should be cut in half.

Q. And what figure would you give to Projection No. 2?

A. That would give \$17,000.00. I am sorry, that would reduce it by \$17,000.00 and give a figure of \$28,000.00.

Q. Now going on to the next item, which one did you consider?

A. Power.

Q. And what determination, if any, did you reach in considering that subject?

A. Again, the total cost of power shown is twice the comparable figure, approximately, for Acme Color Print Company.

Q. Now, do you accept that figure in Projection No. 2?

A. No, I do not accept it. I think it is too high.

Q. What are your reasons for that?

A. Well, we are talking about essentially similar operations, the differences between the two. The differences in the size of the newspapers being served and the differences in the number of presses being used would tend to increase the comparative power consumption at Acme rather than reduce it. What I am saying is, I don't believe we should use less power than Sylacauga. Slightly more, perhaps, in terms of the amount of energy being consumed. Now, it is possible—
950 I do not know what the price of power is in Alabama, I know in California 1.4 cents per kilowatt hour is the effective rate. I can conceive of there being a higher price in Alabama, but not twice as much, so I think again the difference should be cut in half.

Q. Now, what figure would you arrive at?

A. I reduced it 5,000 to a new total of 17,896.

Q. What was the next item you considered, Mr. Lynde?

A. The figure is labeled "Real Estate"; according to the notes it included the building, depreciation, taxes, insurance, repairs, the operation of the building, equipment.

Q. Have you ever seen the Sylacauga Plant?

A. No, sir.

Q. What did you base your assumptions upon then?

A. Just the amount of the investment and the capacity of the plant, what it is going to produce.

Q. And what conclusion did you reach?

A. I have no quarrel with that figure.

951 Q. No quarrel at all. Now go on to the next item.

A. The next item on Projection No. 2 is the plant's miscellaneous. I do not have a comparable figure at Acme and I am unable to make any comparison.

Q. Did you consider any of the items under "Selling-Administrative"?

A. Yes.

Q. What items did you consider?

A. Selling, travel, telephone, telegraph, postage, interest.

Q. Now, in regard to travel, what expenses do you have at Acme?

A. \$3,600 this year.

Q. And what does that account for, what type of travel?

A. Well, it is all the travel that is done on company business by company employees.

Q. Well, is that sales travel?

A. Partly.

Q. And what other types of travel would it entail?

A. Well, it includes attending publisher's conventions, one accountant's convention.

Q. Now, did you consider each one of the items under "Selling-Administrative"?

A. Well, the items are selling, travel, telephone, 952 telegraph, postage, interest, miscellaneous.

Q. All right, now—

Mr. RAICHLE: You left out a couple.

The WITNESS: Those are the ones I considered. I made no attempt to study administrative salaries. This is a question not dependent on factor I know about.

By Mr. FELDMAN:

Q. You considered sales and travel, telephone and telegraph, postage, interest and miscellaneous, is that correct, sir?

A. Yes.

Q. Did you consider them separately or together?

A. Both.

Q. Tell us which ones you considered separately and which ones you considered combined?

A. All of them.

Q. You combined all of them?

A. Yes, sir, and I also considered them separately.

Q. Tell us your conclusions each way.

A. Well, in general, I think the figures are too high. They are in most cases twice or more than the comparable costs at Acme, and I feel they should be reduced by at least half the difference, to become more realistic.

Q. Will you go through each heading and tell us the reasons for your conclusions?

The COURT: Does it make some difference that this is a new business, established in a new area, as against your Acme that has been going on for thirty years, don't you think—

The WITNESS: I do think it makes a difference, yes.

954 The COURT: Would you tell us what that difference is?

The WITNESS: Well, on that specific point, it seems to me that the important factor is that this business that we are talking about, printing at Sylacauga, have been sold. It is being printed now; it doesn't need to be sold.

The COURT: What do you mean, it is sold?

The WITNESS: These jobs that would be printed at Sylacauga are now being printed.

The COURT: Is there any difference in the location? You just heard today about some man down in Southern Color taking all the work out of Wilkes Barre. Is there a difference about being produced in Sylacauga with reference to some other location?

The WITNESS: With reference to selling expense, it seems to me that selling has been done.

By Mr. FELDMAN:

955 Q. Will you go through each item and tell us the reasons, if any?

A. The same comment with respect to travel. The fact that the runs are now held, are now being printed would reduce the

amount of travel expense. I don't mean to suggest there be any. I am suggesting that there probably——

Q. What do you say, would that be initially or would that continue indefinitely?

A. With respect to the volume of business covered under Projection No. 2 only.

Q. Now, are there any other items that you could set forth your reasons?

A. No, I think that covers it with respect to selling and travel.

Q. Now, as to the broader heading "Selling", you did not consider administrative. What did you think the figure should be?

A. I think the \$25,000.00 shown for selling and travel expense in two items on the Projection, a total of 25,000, should be 17,000.

Q. Now, after you have completed your study, did you tabulate and put in the form of what you think the figure should be as to which you gave testimony previously?

956 A. Yes, sir.

Q. Do you have any paper with you which obtains that information?

A. I do.

Q. Is that what you prepared?

A. Yes, sir.

Q. Now, I notice it says—well, suppose I have it marked for identification?

(Whereupon, paper was marked Plaintiff's Exhibit G-2 for identification.)

Mr. RAICHLE: Can I see it now?

Mr. FELDMAN: I will be wanting to put it in evidence.

Mr. RAICHLE: Could I see it before?

Mr. FELDMAN: I just wanted to get the other one.

By Mr. FELDMAN:

Q. Referring to Plaintiff's Exhibit Number 2 marked for identification it has a heading "Working Notes" attached in writing inside. Is that the working notes referred to in Plaintiff's Exhibit Number 1 marked for identification?

957 A. Yes.

Mr. FELDMAN: At this time I would offer in evidence Plaintiff's Exhibits Numbers 1 and 2.

The COURT: You want to offer these, Mr. Raichle. You want to look these over, Mr. Raichle.

Mr. RAICHLER: Yes. I know now that I want to object to them.

The COURT: We will take a recess for a few minutes.
(A short recess taken at 3:40 p.m.)

958

PROCEEDINGS AFTER RECESS

The COURT: You were at the compilation.

Mr. FELDMAN: Yes. We will now proceed. The figures he put down here are only half of what he estimated—well, I will have the witness testify to that.

DIRECT EXAMINATION

By Mr. FELDMAN (Continued):

Q. Referring now to plaintiff's Exhibit Number 1 as to what figure in the rates which you inserted, should be placed in Projection No. 2 based on your experience, how did you arrive at those particular figures in comparison with the testimony you gave here?

A. Well, there was some difference; it is not the same in all cases.

Q. Will you explain that difference, if any?

A. In the case of the payroll and benefits adjustment, I adjusted the Projection No. 2 figure to an amount approximately fifty percent of the comparable figure at Acme Color Print Company on the basis of factors I described. In the case of the newsprint cost I reduced the figure by \$30,000.00 on the basis of the assumed cost of newsprint at the printing plant and the assumed consumption rate which I stated.

Mr. RAICHLER: When you say assumed, you mean assumed by the purpose of—

Mr. FELDMAN: Well—

Mr. RAICHLER: Nobody else has assumed it. He has assumed it.

Mr. FELDMAN: The witness is testifying. He means he assumed it.

COURT: Proceed.

Q. By Mr. FELDMAN:

Will you continue, Mr. Lynde?

A. In the case of all of the other adjustments which are shown on G-2 I made a reduction of the figures in Projection No. 2 equal to one-half of what I felt was the disparity.

Q. Now, when you got through, what total figure did you get in regard to Projection No. 2 as opposed to the projection listed in Exhibit A?

A. Well, the net effect of my adjustment is to reduce the total cost of the operation by \$150,000 a year.

960 Mr. FELDMAN: I offer at this time in evidence plaintiff's Exhibits 1 and 2 for identification.

Mr. RAICHLE: I object to them both on the ground that no basis has been laid for them and it appears from the witness's testimony that his opinions as thus expressed are not grounded upon legal and competent considerations or facts established or assumed on the basis of assumptions described in any way that anybody could understand, that this is not the subject of expertise of this character and he hasn't been shown to have any expertise and at the very minimum a basic showing for admission of such a document has not been established.

The COURT: Overruled.

The CLERK: G-1 and G-2 marked in evidence.

(Thereupon Exhibits G-1 and G-2 for identification
961 were received in evidence.)

By Mr. FELDMAN:

Q. Now, Mr. Lynde, assuming that Acme were restricted to a volume of production of approximately 3,434,000 fours per week as stated in Projection Number 1, Exhibit A, and all other factors were the same as to Acme's operation, would Acme in such an event based upon your opinion operate at a financial loss?

Mr. RAICHLE: I object to that. There has been absolutely no basis, Your Honor, for that question.

The COURT: You are assuming that Acme was operating under the same conditions as at Sylacauga plant, is that correct?

Mr. FELDMAN: No. I am assuming first under his own condition he is going to project the amount of projection No. 1 and

I want to know what would happen as to Acme. I will
962 go on onto the other assumptions but I want to develop it on the basis of his experience. That is the first one.

Mr. RAICHLE: This is over my objection.

The COURT: Overruled.

Mr. RAICHLE: It is incompetent and no basis has been laid.

The COURT: Overruled.

Mr. FELDMAN: Will the reporter please read it back?

(Whereupon the reporter repeated as follows:

"Q. Now, Mr. Lynde, assuming that Acme were restricted to a volume of production of approximately 3,434,000 fours per week as stated in Projection Number 1, Exhibit A, and all other factors were the same as to Acme's operation, would Acme in such an event based upon your opinion operate at a financial loss?"

Mr. RAICHLE: Could I point out to Your Honor the fatal defect in the question? He says "And all other factors are the same." He doesn't say the same as what. That is a pretty important point of departure. The figure assumed for the purpose of our projection is \$5.58 and a fraction thereafter predicated upon the average price received for the group of ones permitted under Your Honor's order to be printed at Sylacauga. Now, it appears that this gentleman gets much higher prices as is evidenced by the fact that his revenue from the 7 million is \$4,500,000 more than that projected for the same 7 million down at Sylacauga. Now, if the question assumes by the word "same" that he is getting the same price on his suppositions run indicated by the hypothetical question or his supposition operation for a year on the basis of 3,434,000, that is one thing. If he is assuming he is getting the higher price so that the question with the use of the word "same" relates to the same price as he is getting in California, that is another, and I think counsel should point that out.

The COURT: I wish you would clarify that.

By Mr. FELDMAN:

Q. Assuming, Mr. Lynde, that Acme were restricted to a volume production of 3,434,000 fours per week and you received an income upon your present charges and all the other operating factors remaining the same at Acme, would Acme operate at a financial loss?

Mr. RAICHLE: Now, that permits the objection or calls for the objection or founds the objection, Your Honor, that this is irrelevant and immaterial and in addition to the other ground of the objection, not a proper way to seek to impeach Projection No. 1. He is assuming an entirely different set of facts. I suppose that if he could charge the right

price and get it, you could operate on a million down in Sylacauga.

The COURT: Of course, the way this testimony is, it is based on a hypothetical question.

Mr. RAICHLE: I want to state the objection.

The COURT: Actually, he is attempting to persuade me so I do not think that any technicalities will prevail in this type of a lawsuit.

By Mr. FELDMAN:

Q. Mr. Lynde, do you recall the question?

A. Yes, sir.

Q. Will you give the answer?

A. I think under those conditions that Acme would be at the break-even point.

Q. Now, assuming that Acme were restricted to a
966 volume production of 3,434,000 fours per week and assuming also that Acme had no outstanding labor contracts and could go out and recruit labor anew and then assuming also that the runs at Acme were of comparable size and circulation as the runs in Projection No. 1, would Acme then operate at a financial loss?

A. No. It would be in a better position than under your first question.

Q. It would?

A. Yes.

Mr. RAICHLE: I move to strike that out. He says that you can go out and recruit labor anew. He doesn't say at what place and under what terms and conditions or on what basis.

The COURT: Well, I will grant you it is nebulous but I am letting it in.

Mr. RAICHLE: Very well, sir.

The COURT: You can persuade me the other way.

By Mr. FELDMAN:

Q. Will you tell us the reasons why you say they
967 would be doing—and when I say “they” I refer to Acme, will you tell us the reasons why they would be doing better?

A. Well, under your second question, your second hypothetical question, you indicated that the runs would be similar in size to the six runs considered under projection No. 1. These particular runs are considerably larger in circulation than the average and some of them are larger than any individual run

now being produced at Acme Color Print Company and again I want to emphasize that the length of the run tends to lower the cost of producing it; it is a major factor. Also you indicate that Acme would not be limited by any existing labor contracts, but it would be free to go out and recruit labor at whatever price it wanted to pay for labor on the open market and it would be my opinion under those circumstances we would be able to reduce the cost of labor at Acme considerably and therefore the runs would cost less and with cheaper labor we would be in an improved position.

968 Q. Now, assuming everything I just asked you were the same, and in addition you had a press comparable to press 2022—did you read the description of press 2022 in the Gorman deposition?

A. I did.

Q. Now, assuming all of the factors you have testified to recently were the same, and in addition to that you had a press comparable to press 2022 instead of the four presses you presently have at Acme, what then would be the financial picture as to profit and loss at Acme?

Mr. RAICHLE: I object to that in form and substance.

The COURT: Are you familiar with that, the operation, the production?

The WITNESS: I have read the description of it, I believe I understand it, sir.

By Mr. FELDMAN:

Q. Will you tell us what you know about that press?

Mr. RAICHLE: I assume he knows about the press, but what be the financial picture then, what in the world would
969 that mean?

The COURT: He said the press, in his mind, has adaptability to reduce costs.

The WITNESS: That is correct.

The COURT: I will let you discuss it.

By Mr. FELDMAN:

Q. What is your answer?

A. As I understand it, we would have this press, the Sylcauga press, instead of our own present equipment?

Q. That is right, instead.

A. Then, our costs would drop still further. This is a much more efficient printing press than any we have, much more flexible.

Q. One other thing I would like you to clarify; I believe in talking or testifying before about sales expenses you stated that sales expenses would be fixed, is that correct, did you use the word fixed?

A. No, I don't believe so.

Q. Do you recall what you testified as to sales expenses at Sylacauga in relation to what your costs are at Acme?

A. They are approximately—may I see the exhibit 970 again?

Q. Yes.

A. The combination of selling and travel expenses indicated on Projection 1 is \$45,000.00—may I go on?

Q. Go ahead.

A. My point was this. I made an assumption here that the printing work to be performed under Projection 2 would all be printing work that is now being performed at one or another of the printing plants, Dunkirk or Wilkes-Barre. I make this assumption. If this were not the case, there would be no need for the petition.

Mr. RAICHLE: I don't get that, what?

Mr. FELDMAN: The petition.

Mr. RAICHLE: What petition?

Mr. FELDMAN: Before the Court, a motion. That is a lay term for the motion you brought on.

The WITNESS: Motion, all right.

Mr. RAICHLE: He is an expert on law now.

Mr. FELDMAN: He never said he was an expert on law.

The COURT: All right. If we are going to get this witness on the road tonight, we are going to have to move along.

971 The WITNESS: In other words, the selling has been done on this work, these are sold now, and the selling expense then would be minimal until such time as some additional work beyond what is in vision by Projection 2 is sold.

Mr. FELDMAN: I have no further questions.

CROSS EXAMINATION

By Mr. RAICHLE:

Q. Did you read the Hornady deposition? You have been reading depositions, you say.

A. No, sir.

Q. Did you hear me read it?

A. I did.

Q. Did you hear how Hornaday and Southern Color Printing had taken away hundreds of thousands of fours?

A. I heard it, yes, sir.

Q. Since April of 1961?

A. Yes, sir.

Q. You say the selling has all been done, you assume
972 no selling is necessary. Do you still make that statement in the face of what you heard from the Hornady deposition?

A. With respect —

Q. Yes or no?

A. With respect —

Q. Yes or no, please?

A. I am sorry, I can't answer that question yes or no.

Q. All right. If you had a business, a printing business if you want to stick to that, and you had a series of jobs expiring and you had an aggressive competitor who was stating an avowed intention to get all of your business that he can, and had demonstrated that he could get a substantial portion of it, and couple that with the statement that he had bids outstanding at this very moment, wouldn't you feel it behooved you to make some selling efforts to offset his efforts? Yes or no?

A. I certainly would.

Q. That selling effort would involve expense, is that true?

A. Yes.

Q. Expense that you haven't allocated or allowed for here, is that true?

973 A. Yes, sir, that is true.

Q. So that if there is competition, if there is an invasion, if there is a taking away of business, selling expense is a real problem immediately to be incurred as part of the cost of the operation, is that true?

A. Not as I understand Projection No. 2.

Q. Forget about Projection No. 2 for a minute. If you have a business which is being assailed by competition, you are losing business; the sales expense to offset that effort on the part of the competition is real and immediate?

A. Yes, sir.

Q. Getting to this situation; you made no allowance for that cost or expense of operation which you, yourself, say is very real and immediate, is that true?

A. We are talking about two different circumstances.

Q. Why do you argue with me? What is your connection with this anyway?

A. I want to be understood.

Q. It isn't a question of telling the truth, you want to be understood?

A. I want to be understood.

Q. On behalf of the Government. Who first asked you to come here anyway?

A. I was subpoenaed.

Q. You were subpoenaed?

A. Yes, sir.

Q. Have you got the subpoena?

A. I do have it, it isn't in Court.

Q. Where were you subpoenaed?

A. In my office in San Bernadino, California.

Q. In a civil case you were subpoenaed by Mr. Feldman to come into this district?

A. That is correct.

975 Q. Did you know you were going to be subpoenaed?

A. I did.

Q. Did you arrange to be subpoenaed?

A. I did not.

Q. When were you first contacted about this matter anyway? The matter of being a witness here?

A. Well, it has been within the past five or six weeks. The first contact was in late November.

Q. Just tell us what the contact was, if you will, please.

A. I received a telephone call.

Q. From whom?

A. From Mr. Feldman.

Q. Did he identify himself or did you know him?

A. He identified himself and I knew him.

Q. What did he say and what did you say?

A. He told me that he had a set of figures on which he had been asked by the Court to make some sort of a report and comment, and he wanted some help.

Q. Did he tell you whose figures they were?

A. No.

Q. Now, can you give us—fix that date?

A. I would say it was between the 10th and the 20th of November.

Q. Of this year?

A. Of this year.

Q. And what did you say?

A. I asked him to tell me some of the figures.

Q. And do you mean to say that he did not tell you whose figures they were?

A. I believe he did not on the first telephone call.

Q. But he related the figures to you over the telephone?

A. Some of them.

Q. Which ones?

A. I recall that we discussed the payroll figure and the repairs figure. I think that is all on the first telephone call.

Q. Did he tell you that it was a court in Buffalo that had made this request of him?

A. I don't believe he identified the court.

Q. What was the next communication you had from him, or contact you had with this matter—any kind or character?

A. Well, he telephoned me again. In that first conversation I asked him for some additional information. He telephoned me again and said he was sending it.

Q. What information did he ask for?

A. Well, I asked to know more about the operation, the figures we were supposed to describe, more than what he had had at the time he first telephoned me.

Q. Didn't you ask him on the telephone?

A. I did, yes. He didn't know at that time.

Q. Said he didn't know? He didn't know whose operation it was, or where it was?

A. He didn't say that.

Q. Well, what was said on the second occasion?

A. He told me he was sending me the information we had discussed on the first telephone call, plus some additional, and that he probably would want me to prepare an affidavit of my comments on that information.

Q. This was on what day?

A. I couldn't fix the date exactly, sir. It was probably three or four days after the first telephone call.

Q. By that time you knew whose figures they were, didn't you?

A. In the second phone call, I believe, he identified them.

Q. And he told you about this case?

A. Yes, he explained to me what this hearing was generally about.

Q. You knew of Greater Buffalo Press, didn't you?

A. Yes.

978 Q. You knew of International Color Printing?

A. Yes, sir.

Q. You knew of the proposed Sylacauga operation, didn't you?

A. Not very much at that time.

Q. You had heard about the injunction, hadn't you?

A. Yes, sir.

Q. You are in certain areas at any rate a competitor of Southwestern Printing—Color Printing Company, aren't you?

A. Yes, sir.

Q. And you knew you were being asked to testify concerning a competitor's figures, didn't you?

A. Yes, sir.

Q. Did you welcome the opportunity?

A. I was frightened.

Q. By the Department of Justice?

A. No, by the idea of going on the witness stand.

Q. Are you still frightened?

A. A little.

Q. I see. Now then, ———didn't keep you off, though, did it?

A. No, sir.

979 Q. Now then, when the figures came or when the information came by mail—I take it—or did someone come out and visit you?

A. I was served by a Federal Marshal.

Q. No, but when you first got the figures, or some papers, in what form then did they come?

A. They came in the form of a copy of Exhibit 1, the Projections and the notes.

Q. Were the affidavits annexed to it, Mr. Hammond's affidavit and mine?

A. No. No, sir.

Q. And did they come with a covering letter?

A. Yes, sir.

Q. Have you got the covering letter?

A. I have it. I do not have it in court.

Q. Got it here in Buffalo?

A. Yes, sir.

Q. Would you bring it the next session then?

A. Yes, sir.

Q. Now, what were you told to do in the letter, or over the telephone, with respect to these figures?

A. To study them, to make any possible comparisons between those figures and our own experience, and to comment on them. I was asked specifically to determine whether I
980 thought the figures were reasonable, whether the operation described was—would cost approximately what the figures said it would cost.

Q. And did you make a written report?

A. No, sir.

Q. Did you make an oral report?

A. I indicated some reaction on the telephone, but until arriving in Buffalo, I didn't make any real report in detail.

Q. Did Mr. Feldman tell you that he had tried to get an expert somewhere else to testify?

A. He did not.

Q. Did he tell you that Mr. Smith had gone over his figures, that is Mr. Smith of Southern Color Printing? And couldn't make a dent in them?

A. He did not.

Q. Did he tell you he had taken the matter up with Mr. Smith?

A. No, he did not.

Q. You knew Hornaday, didn't you?

A. No, sir.

Q. Did he tell you that he has shown these figures to Mr. Hornaday?

A. No, sir.

Q. Now then, have you ever been to Sylacauga?

981 A. No, sir.

Q. Have you ever been to Alabama?

A. Yes, sir.

Q. Flew over it, I suppose?

A. I was at an airfield in Alabama once for twenty minutes or so.

Q. Mobile?

A. I can't recall the name of the town. It is a nuclear research place.

Q. Do you know where Sylacauga is?

A. No, sir, I do not.

Q. Well, you said it was ten miles from a newsprint mill or something, didn't you?

A. I believe I said it was in the immediate area of a newsprint mill.

Q. Where is the newsprint mill, do you know?

A. Coosa River.

Q. Does the Coosa River run east and west or north and south?

A. I couldn't say.

Q. Is it in the western part of the state or the eastern part?

A. I do not know.

Q. Do you know where any of the cities of Alabama are?

A. I have a fair idea where Birmingham is.

982 Q. Where do you think that is?

A. It was something like three o'clock in the morning when I was there, fifteen or twenty minutes.

Q. What did you do, orient yourself by the moon or something?

A. I am not familiar with the geography of Alabama.

Q. You don't know anything about the state or any city in it, do you?

A. I would say that is generally true.

Q. Well, it is exactly true, isn't it?

A. Well, I have a little bit of knowledge about it.

Q. And yet you are talking about the saving and the transportation of newsprint from a mill in Coosa River located to you don't know where—located you don't know where to Sylacauga, another place you don't know where—right?

A. That is correct.

Q. Now, then, have you seen the affidavit as to what it is going to cost us to get newsprint down there?

A. No, sir.

Mr. RAICHLE: Do you have that affidavit?

Mr. FELDMAN: No.

Mr. RAICHLE: Mr. Feldman doesn't know what the
983 newsprint is going to cost and you don't know.

The WITNESS: Right.

By Mr. RAICHLE:

Q. And the standard price is \$135.00 a ton, isn't it?

A. Or well, \$134.00, I think that there is some variation.

Q. And you were using \$132.00?

A. Yes.

Q. Do you get it for 132?

A. No, sir.

Q. Does Southern Color Printing get it for 132?

A. I don't know.

Q. Can you give me the name of any printer who does get it for 132?

A. No, sir.

Q. Now, when did you come here?

A. I arrived here Sunday morning at ten o'clock.

Q. Had you met Mr. Feldman before you came here?

A. Yes, sir.

Q. Where?

A. At Acme Color Print Company.

Q. When?

A. This would be a matter of three or four years ago.

984 Q. Oh, he has been out to see you, out there, is that right?

A. He was there.

Q. In connection with this case?

A. I do not know. I assume so.

985 Q. Well, you assumed so at the time. I don't want to spend a lot of time on this, but when Mr. Feldman called you to talk about the figures you knew it was the same old case he had been out to see you about before, isn't that true?

A. I felt sure it was.

Q. Yes. Now, when you got here in Buffalo who did you meet? Did you meet Mr. Smith?

A. No, sir.

Q. Did you meet Mr. —

A. I did meet Mr. Smith today in Court.

Q. But did you meet Mr. Feldman?

A. Yes, sir.

Q. And did you get up these exhibits, G-1 and 2, since you have been in Buffalo?

A. I did them over again since I have been in Buffalo.

Q. Oh, you did them over again. Where are the old ones?

A. Well, the old ones are in California.

Q. Are these more suited to your purpose?

A. I think they are a little clearer. The figures are the same, the arrangements are a little different.

Q. Did you and Mr. Feldman do these together?

A. No, sir.

986 Q. Where did you do these, in the hotel?

A. Yes, sir.

Q. Now then, you said you were a competitor of Southwestern Color Printing, the one at Lufkin, right?

A. Yes, sir.

Q. And certain of the areas you have out there are pretty much to yourself, don't you agree, geographically?

A. Lufkin is the nearest color printer to us.

Q. Well, certain of the areas which you do business in are areas that you have to yourself, due to your competitive geographic advantage, is that right?

A. We have felt that way previously, but we have doubts now.

Q. Is that because Southwestern Color took the Phoenix paper away from you?

A. That is a prime factor in our doubts.

Q. That was rather recently, wasn't it?

A. As a matter of fact, it does not become effective for another week.

Q. But you knew they underbid you?

A. We were told that.

Q. And your price was \$3.00 higher?

A. We don't know that.

987 Q. Don't you know that?

A. No.

Q. From what I understand, you say your cost of operation is lower in certain claimed instances, by you, lower in certain instances than the figures in Column 2, right?

A. In some cases, yes.

Q. In some cases they are higher?

A. Yes, sir.

Q. And in those cases that are higher, you don't have any quarrel, that is the way you expressed it, you said "I have no quarrel with the figures". When our figures are lower than yours in our column 2, then you don't quarrel, isn't that what you said in substance?

A. No, sir.

Q. Didn't you point to two specific items and say you had no quarrel because they were lower?

A. No, sir.

Didn't you say you had no quarrel with them?

I did.

Weren't they lower in both instances?

No, sir.

Will you point to those which you say you quarrel and

those which you say you do not quarrel with?

A. I don't have them.

Q. Take these, if you will, please. Now, let me change subject for just a minute and I will get back to where we left you, and please listen to the question carefully, prepared Exhibits G-1 and G-2 on the same basis as the note to our Exhibit A and made a part of Exhibit A indicating that Column 1 and 2 were made?

With respect to the figures from Projection 2, yes.

Well now, do yourself the justice of being right about do you mean that?

I used the actual figures from Projection 2 here on the

That isn't what I asked you.

I just copied them.

I asked you if you developed your figures as note one, integral part of Exhibit A, indicates that we developed our

No, sir, I did not.

Do you know what the result would be if you developed figures on the basis that note one states we developed ours?

I think they would be wrong.

Q. No. I move to strike that out, that isn't responsive. I asked you, do you know what the resulting figures would be?

They would be the figures in Projection No. 2.

Yes. Now then, where we say in substance that a figure based upon an experience at a Dunkirk plant or some other, you disregard that statement, don't you, in developing figures?

No, sir, I did not disregard it.

Well, you didn't accept it, is that right?

In some cases that is right.

Are you in a position to know what our experience is at

Dunkirk?

No, sir, not beyond what it says in those notes.

Q. But assuming what is stated in the notes is true and correct, you have still disregarded the statement contained in the notes in various instances, isn't that true?

A. I took them into consideration.

Q. But you did not accept them even though you had no basis on which to challenge them, isn't that true?

A. I did not accept them.

Q. So as to whether or not we had the experience and the figures statedly predicate upon experience, whether they
990 were predicated on experience you don't know, have no way of telling and still won't accept, is that right?

A. Yes, that is right.

991 Q. Is that because we took the Phoenix business away from you?

A. No, sir.

Q. Is that because we are competitors of yours?

A. No.

Q. Is that because you want restraints placed upon us?

A. No, sir.

Q. Is that because you want it to be circumstanced as this other favorite competitor, Southern Color Printing?

A. No, sir.

Q. Now, let's take your figures. You know when you prepared the figures and when you gave your testimony that our income figure in each column was based on the average price charge in the instance of the five or six runs which we were under the Court's order allowed to transfer to Sylacauga if we opened the plant; you knew that, didn't you?

A. I knew it was in the notes, yes, sir.

Q. Well, but you could determine that that was so; you didn't have to take the word of a note, isn't that true?

A. No. What the prices are—

992 Q. That isn't what I asked you. The note says that the dollar sales volume for Projection No. 1 was secured by multiplying \$5.585 which is the average contract price per thousand four-page standards of group of newspaper which Dixie Color Printing Corporation is permitted to print at Sylacauga, Alabama, by the average production represented by these contracts. You read that, didn't you?

A. Yes.

Q. So you knew the price which was involved in the multiplication which resulted in the income figure?

A. I know the arithmetic is correct, yes, sir.

Q. And, therefore, you could prove the \$5.584 figure, isn't that right?

A. I did so.

Q. And having proved it, you still didn't accept it, is that right; in other words, you didn't trust yourself?

A. No, sir, that is not right.

Q. Now then, by what figure do you multiply your volume; what is your figure compared with our \$5.585?

A. I believe it is approximately \$1.27 higher. I don't have the figure here.

993 Q. All right. So it is roughly 20 to 22 per cent higher, right?

A. Approximately.

Q. So that when you are talking about a profitable operation by Acme, you are talking prices involved in the weekly fours on your volume 20 per cent higher than those involved in ours?

A. Approximately, that would be an average.

Q. Yes. So that on your seven million, whatever those were, you get a figure of 2,000,008, right?

A. Yes, sir.

Q. So you assumed a revenue of 2,000,008 on the same volume that our Projection No. 2 assumes at Sylacauga, that is the 3,434,000 fours a week which would result in \$2,289,613.00, right?

A. I don't understand you, sir.

Q. Well, I understand you, so we will start over. You are assuming on the right-hand column of G-1 an income to you of \$2,800,000.00, right?

A. That is the actual figure.

Q. But you have put down \$2,800,000.00 resulting from substantially the same volume that we have in our Projection 2 which brings us only \$2,289,613.00, right?

994 A. Yes, sir, that is right. This is the figure from your Projection.

Q. So that you have almost \$600,000.00 more in revenue from the same volume that we would be permitted to print under this order giving an effect to the particular runs involved, you have \$600,000.00 more revenue than we would have, right?

A. No, sir, I don't think that is right. I have \$600,000.00 more than the figure on Projection 2.

Q. Well, Projection No. 2 is multiplied, is it not, by the volume and the price just as your \$2,800,000?

A. I don't think it is the same, sir.

Q. Well, with his Honor's permission, I will demonstrate that it is.

The COURT: Let me talk to you about this generally for a few minutes. I take it, Mr. Raichle, that you are not anywhere near the end of this cross-examination?

Mr. RAICHLE: No, your Honor.

The COURT: I don't want to hurry you. I had hoped I could accommodate the gentlemen to send them back to California but I trust that you can make the necessary arrangements. I don't see any way that we can finish it up tonight.

The WITNESS: That is right, your Honor.

The COURT: I know that it has been a long day for me and I believe that we will renew at ten o'clock in the morning.

Mr. RAICHLE: Thank you, your Honor, I am sorry it is so long.

The COURT: I don't want to criticize anyone.

Mr. RAICHLE: Could I ask the witness to bring his profit and loss statement here and these other documents I have asked for in order to facilitate the cross-examination?

The WITNESS: I will bring you the documents that I have with me.

Mr. RAICHLE: You have got a P&L of your own that this \$2,800,000.00 figure results from?

The WITNESS: I don't believe I have it in Buffalo.

Mr. RAICHLE: Well, we will find out.

The COURT: Well, bring whatever you can.

996 The WITNESS: I will, sir.

The COURT: And bring it all tomorrow. We will recess until ten o'clock tomorrow morning.

(Thereupon, at 4:30 p.m. the proceedings were recessed until Wednesday, December 19, 1962 at ten o'clock a.m.)

[Caption Omitted in Printing]

Proceedings held before

996a Hon. JOHN O. HENDERSON, United States District Court
Judge, Western District of New York, on December 19th, 1962,
at Buffalo, New York.

Appearances: Elliott H. Feldman & John W. Poole, Jr.,
Esqs., Attorneys for the Plaintiff.

Raichle, Moore, Banning & Weiss, Esqs., By Frank G.
Raichle, Esq., and Ralph L. Halpern, Esq., Attorneys for
Greater Buffalo Press Incorporated.

Gallop, Climenko & Gould, Esqs., By Lester Miller, Esq.,
and

Lord, Day & Lord, Esqs., By Herbert Brownell, Esq.,
Attorneys for the Defendant, The Hearst Corporation.

997 (Proceedings December 19, 1962, commencing at
10:00 a.m.)

The COURT: Mr. Lynde, will you take the stand again?
PAUL LYNDE, having been previously duly sworn, re-
sumed and testified further as follows:

The COURT: Mr. Climenko had to go back?

Mr. MILLER: Yes, I am appearing for him.

The COURT: Yes.

CROSS EXAMINATION

(By Mr. RAICHLE (continued):

Q. Well, did you do some more work on this last night
after adjournment?

A. Some, sir.

Q. What did you do?

A. I had a brief conversation with Mr. Feldman in my
room.

Q. Well, did you work up any more figures?

A. No, sir.

Q. Did you correct any of those that you were talking
about yesterday?

998 A. No, sir.

Q. Did you find out any more about Alabama?

A. I saw the affidavit that was referred to yesterday.

Q. What affidavit?

A. It was referred to in court yesterday. I hadn't seen it at that time. I saw it last night.

Q. You mean Mr. Feldman's affidavit?

A. I believe the affidavit is made by someone connected with the Coosa Plant, Newsprint.

Q. Did that mention \$32.00?

A. No, it didn't.

Q. Now, as a matter of fact, you don't know any more about Alabama today than you did yesterday? I have a reason for asking you that.

A. Only with respect to the newsprint mill.

Q. Now, then, you spoke of the power, the item of power is one of the costs?

A. Yes, sir.

Q. Do you know anything about whether this plant has to be air-conditioned in summer and heated in winter?

A. There was reference in the note attached to the projections as to air-conditioning and heating, yes, sir.

999 Q. Do you know what the temperatures are in Alabama?

A. No, sir.

Q. Did you notice it was two below zero on the 11th of December of this year?

A. No, sir.

Q. In all circumstances, the plant would certainly have to be heated in winter?

A. I would say so, yes, sir.

Q. And would have to be air-conditioned in summer, wouldn't it? Do you know the temperature gets as high as 105?

A. At those temperatures, it would have to be air-conditioned in summer, yes, sir.

Q. And have you made any inquiries as to the cost of power in Alabama?

A. No, sir.

Q. Do you know anything about the cost of power?

A. No, sir.

Q. Now, have you ever been to Wilkes-Barre?

A. No, sir.

Q. You have never seen the operation at Wilkes-Barre?

A. I have not.

Q. Have you seen the operation of Southern Color Print?

A. No, sir.

1000 Q. Have you ever been to that plant?

A. No, sir.

Q. Do you know where it is located?

A. Newberg, Newberg News, Virginia.

Q. What did you call it?

A. Newberg News.

Q. Newberg News?

A. That is what it is called.

Q. Isn't it Newport News?

A. I believe we are speaking of the same town. I am not sure.

Q. You have never been there?

A. No.

Q. You don't know anything about the cost of operation there, do you?

A. Very little.

Q. Well, do you know anything about it?

A. I have had some conversations with people who work there, who tell me their costs are high. I do not have any figures.

Q. Substantially higher than the cost in Project 2?

A. I don't know that comparison.

Q. You don't know anything about the cost of operation at Wilkes-Barre, do you?

1001 A. No, sir.

Q. Do you know anything about the cost of operation at Lufkin?

A. Only indirectly by reason of the fact they are able to underbid Acme Color Print.

Q. In some places, on some occasions?

A. Yes, sir.

Q. Do you know whether the cost of operation at Lufkin were higher or lower than those in Projection 2 with respect to the various items mentioned in the Projection?

A. I do not know.

Q. You are without information as to whether the costs are higher or lower with respect to the various items on Projection 2 in every other plant in the country, is that true; with the exception of your own?

A. That is true.

Q. Your plant is located where?

A. San Bernadino, California.

Q. It is owned by whom?

A. It is owned by a newspaper.

Q. What is the name of the newspaper?

A. The corporate name is Sun Company of San Bernardino.

Q. Is it part of the newspaper plant?

1002 A. They are separate plants.

Q. Close together?

A. About a mile apart.

Q. Now, I am going to invite your attention to a fact that appears right in the face of your exhibits here, G-1 and G-2. I want to have it very clear in everybody's mind, if I can, that neither of these exhibits make any reference to our Projection No. 1, do they?

A. I believe that is correct.

Q. You believe it; you know, don't you?

A. I would like to look, sir.

Q. Have you forgotten whether they do or not?

(Document shown to witness.)

The WITNESS: I believe that is correct.

1008 Q. Well, you know it now, after examining it?

A. It is correct.

Q. So that your testimony so far as these exhibits are concerned related solely to our projection No. 2?

A. I believe I made some reference to No. 1 in my testimony, not on the exhibits, though.

Q. All right. And you of course looked over our projection No. 1, didn't you?

A. I did, sir.

Q. You were requested to?

A. Yes sir.

Q. Just as you looked over Projection No. 2?

A. I looked over No. 2 somewhat more carefully than No. 1.

Q. You were asked to look at No. 1, weren't you?

A. Yes, sir.

Q. And reach conclusions concerning it, weren't you?

A. Yes, sir.

Q. And you were asked to look over No. 2 and reach conclusions concerning it, isn't that so?

A. That is so.

Q. And you proceeded to look at both of them?

A. Yes, sir.

Q. And you decided to testify concerning Projection No. 2, isn't that so?

A. Yes, sir.

Q. And make up exhibits pertaining to Projection No. 2?

A. I didn't realize I was making up exhibits. I didn't realize those things were going to be put in evidence.

Q. Would you have been more careful if you had?

A. I think I would have been more neat.

Q. Would you have been more careful about the figures?

A. I could have been more careful.

Q. Won't you answer a question direct?

A. Yes, sir.

Q. If you had known the exhibits were going to be put in evidence and you were going to swear to them, would you have been more careful about them?

A. No, sir.

Q. Now, at page 345 of yesterday's transcript you were asked this question, and I am refreshing your recollection: "Assuming, Mr. Lynde, that Acme were restricted to a volume projection of 3,434,000 fours per week and you received an income based upon your present charges and all the other operating factors remaining the same at Acme, would Acme operate at a financial loss?" Do you remember being asked that question?

A. Yes, sir.

Q. And you said on page 346: "I think under those conditions that Acme would be at the break even point." Do you remember making that answer?

A. Yes, sir.

Q. And your charges, used the word contained in the question and referred to in the answer, are how much higher than the \$5.58 assumed in the Projection No. 2?

A. We are speaking now of the average?

Q. Yes.

A. I believe \$1.27 and a fraction of cents per thousand fours.

Q. All right. Then it would be comparatively simple to figure, compute, if you please, the loss which Acme would sustain on the basis of the charges assumed in the projection on the volume of 3,434,000, isn't that so?

A. I would have to have more information.

Q. If you were at the breaking point on your own charge, if you charged \$1.26 less per thousand fours, it would be a matter of computation and multiplication, wouldn't it?

A. Provided all other factors remain the same, yes, 1006 sir.

Q. All right. And have you made that computation?

A. No, sir.

Q. Do you have any idea how much more you would have lost than we project in the way of a loss on that basis?

A. It would be something over \$3,000.00 a week.

Q. Well, wouldn't it be \$252,000.00 or thereabouts?

A. I haven't made the calculation, I don't know.

Q. I mean, on an annual basis.

A. I don't know the answer.

Q. Well, it would be substantially more than we projected, isn't that true?

A. We are talking about three million a week and one dollar and a quarter a thousand.

Q. Yes.

A. That is approximately \$3,250.00 a week loss or around \$155,000.00 a year. I don't have my calculating machine here.

Q. Oh, you calculate with a machine, do you?

A. Yes.

Q. Have you ever tried doing it the conventional way?

A. Not for some years.

Q. Even simple addition?

A. Very seldom.

1007 Q. Multiplication?

A. Very seldom.

Q. Now, are these, all these figures machine made figures in your exhibits here, G-1 and 2?

A. Yes, sir, I am reasonably sure they are.

Q. I see. Now, tell me, do you feel you could do better with our press than we do, this press you have never seen?

A. This is the press at Sylacauga?

Q. Yes.

A. I believe that press, from what I know of its description, capability, is considerably—

Q. Please listen to my question. Do you claim that you, Acme, could do better with our press than we do?

A. I don't know how well you do with that press, sir.

Q Oh, you don't know how well we can do with it, do you?

A My position is—

Q You don't know how well we could do with it, do you?

A No, sir.

Q You don't know how efficiently or inefficiently it could be operated, do you?

1008 A Only in comparison with ours, that is all.

Q Do you claim to know that?

A If my understanding of the press is correct, yes, sir.

Q Now, do you say you could operate the press more efficiently than we do?

A No, sir.

The COURT: I wonder if I could ask a question?

Mr. RAICHLE: Certainly, Your Honor.

The COURT: Now, your costs, you say, are substantially less at Acme than this projected cost at Sylacauga and yet your return is a dollar plus, a thousand, more than at Sylacauga. Give me a short answer as to why the differential on the west coast?

The WITNESS: First of all, sir, our costs are less only in certain categories.

The COURT: No, the overall cost substantially. We know that you have told us the vast difference in your overall cost.

The WITNESS: No, sir, our overall costs are higher.

The COURT: Well, what area is that? I don't recall
1009 the particular area. Where is your added expense?

The WITNESS: Payroll and newsprint. In most other areas we were lower in the projection, but payroll and newsprint we were higher.

Mr. RAICHLE: Those are the two major items.

The WITNESS: Yes, sir.

The COURT: One of the things you talked about yesterday was an assumption they could buy the newsprint and I as an outsider at the initial hearing thought the same thing, that they might have an advantage in buying newsprint nine miles away over buying it from British Columbia. I find it is not so, that the cost is the same for newsprint. Do you now believe that?

The WITNESS: No, sir, I still think it would be an advantage, even though the price of newsprint is the same.

The COURT: Well, the price is the delivered price, as I understand it.

The WITNESS: Yes, sir, but I would like to explain it.

1010 The COURT: Go ahead.

The WITNESS: I agree, the price of newsprint at the printer's plant would be pretty much the same all over the country, but when he takes delivery at the mill rather than at the plant, then there can be negotiated what is called a freight allowance and this tends to reduce the printer's delivered cost, because he is performing the delivery.

The COURT: Well, is there some other printing outfit that is close to a supply like this Alabama supply, that you could compare? Have you had that experience?

The WITNESS: I could point to this affidavit from Coosa Pines, which refers to an allowance made to Birmingham.

The COURT: You do have a similar situation?

The WITNESS: Yes, sir, the same mill.

The COURT: All right. Well, you go ahead. I just wanted to know whether the overall costs were larger than the
1011 Sylacauga costs.

Mr. RAICHLE: That is what I am trying to demonstrate. After all, this is all addressed to Your Honor. We would welcome questions that would clarify it in your mind.

The COURT: All right, go ahead.

Mr. RAICHLE: And Your Honor has in mind the costs he is talking about are the costs on our Projection No. 2, which relates to the \$7,000,000.00 operation that he hasn't challenged.

The COURT: I understand.

By Mr. RAICHLE:

Q. Now, while you are on the subject of newsprint, do you know what we can get newsprint for, costs at our plant down there at Sylacauga?

A. No, sir.

1012 Q. We'll get back to the newsprint, but before I do that I want to get at something else.

The COURT: Could I ask just one more question?

Mr. RAICHLE: Certainly.

The COURT: I hate to interrupt you. What is your competition on the West Coast other than that plant in Texas?

The WITNESS: Wilkes-Barre is printing some runs. I think particularly of the West Tacoma, Washington News Tribune.

The COURT: That means that Wilkes-Barre has to ship the finished product all the way out there, is that right?

The WITNESS: That is my understanding.

The COURT: You are on the West Coast, to the customer—

The WITNESS: We are approximately one-third the distance away, I'd say.

The COURT: Isn't it a fact you are able to charge the price you do, a dollar-plus, more than the projection at Sylacauga because you are in a singularly non-competitive market 1013 out there, except for Texas and Wilkes-Barre which doesn't impress me very much.

The WITNESS: It is true that with those exceptions, we have no other printers in competition with us.

The COURT: There is a difference, isn't there, between the proposed plant at Sylacauga and the Southern Color Print—that is hot competition, as you view it, isn't it?

The WITNESS: Yes, sir.

The COURT: All right.

By Mr. RAICHLE:

Q. Well, before the Lufkin Plant was opened you had no competition in your area, isn't that true?

A. No, sir, that is not true.

Q. Who was your competition?

A. In terms of other printers we competed at that time with both Greater Buffalo and Wilkes-Barre, in some areas.

Q. But there no plant within striking distance of you? 1014 I use the words that I learned from counsel representing the eminent and the respected Mr. Hornady: You had the competitive advantage, didn't you, of location?

A. Generally speaking, yes. There are one or two exceptions, but generally speaking, yes.

Q. Now on the subject of labor rates, what are your labor rates currently?

A. A journeyman's scale in the press room on the day shift is \$3.60 today.

Q. You mean an hour?

A. An hour.

Q. What does the man in charge get?

A. I believe it is \$3.84.

Q. That is per hour?

A. That is per hour.

Q. Now then, he has vacations and paid holidays and all that sort of thing?

A. Yes, sir.

Q. And then don't you know that your labor rates, as just given, are higher than those which we project in Sylacauga?

A. Yes, sir, I am aware of that. No, I will have to change that answer. I don't know what hourly scale you project in Sylacauga.

1015 Q. Now, what hourly scale do you project in Sylacauga in reaching your figures on your exhibits with respect to payroll costs?

A. I did not project an hourly scale for Sylacauga.

Q. Well, what labor rates did you use?

A. Well, if you want me to explain how I arrive——

Q. No, I want you to tell me what labor rates you used.

A. I used the labor costs at Acme and compared them with the labor costs shown in Projection No. 2, and also took other factors in consideration.

Q. And the labor costs at Acme were greatly in excess of those in Projection No. 2?

A. That is correct, sir.

Q. So that, in our projection we were so conservative that we projected labor costs substantially less than your own, isn't that true?

A. Oh, yes, sir, that is true.

Q. So you proceeded to reduce, in your testimony, our labor rates which were already substantially less than yours? Right?

A. That is correct.

Q. How long have you been in this business?

A. Ten years.

Q. Who is your boss?

1016 A. James Richter.

Q. Did you check any of these figures with Mr. Richter?

A. We had some discussions on some of the points that I testified to.

Q. Does Mr. Richter know—I think you told me you did this on a Sunday afternoon here in Buffalo, you made up this stuff?

A. I copied the figures on Sunday.

Q. What, from something Mr. Feldman had?

A. Oh, no, sir, from my own notes.

Q. That was on Sunday afternoon, right?

A. Yes.

Q. Does Mr. Richter know that on a Sunday afternoon in Buffalo you accomplished what you haven't been able to accom-

plish in ten years at your own plant—a reduction of your labor costs by about one-half?

A. I don't understand, sir. I am sorry.

Q. Well, I am the one who doesn't understand. You, in making up your figures, you have used labor rates that are about one-half yours, isn't that true?

A. Yes, that is correct, with respect to Sylacauga I have used labor costs.

1017 Q. So for ten years, you have been trying to keep control of your labor costs, haven't you?

A. Yes, sir.

Q. And one Sunday afternoon, you project one-half of the costs which reflects the best of your efforts and control in ten years? Is that right?

A. No, sir, I wasn't projecting a cost for Acme Color Print Company.

Q. No, you were projecting a cost for testimony here in court against a competitor, isn't that right?

A. That is not right.

Q. What part of it is wrong? You point out anything in that question that was wrong.

A. I believe my efforts were objective, completely so.

Q. That suggests that you had an object.

A. Yes, sir.

Q. And the object was to come here and testify, isn't that right?

A. Yes, sir.

Q. Against a competitor?

A. To testify to what I believe is the truth.

Q. Are you being paid for your testimony?

A. No, sir. Well, in this sense, my salary is continuing
1018 from my employer.

Q. What is your salary?

A. My salary at the present time is \$13,000 a year.

Q. And what are your duties? What do you do?

A. Well, I have responsibility for the full operation subject to—I report only to the corporate president.

Q. Did you bring your profit and loss statement?

A. I did not, sir. I brought my case with all of the papers that I brought with me from the West Coast. I do not have a profit and loss statement.

Q. Well, your company gets up a profit and loss statement every year, don't they?

A. Yes, sir, every month.

Q. What?

A. Every month.

Q. Every what?

A. Every month.

Q. And do you mean to say that coming here to testify as to costs of operation and results of operation and to make comparisons with Acme's operations, you didn't bring a profit and loss statement?

A. No, sir, the figures are all on the exhibit.

1019 Q. What do you mean, "the figures"?

A. But I did not bring the statement itself. I copied the figures on an exhibit.

Q. Then you say that this right-hand column here is
1020 your exhibit?

A. The column labeled 'Acme Color Print' contains actual figures from our records.

Q. It says Acme—1962?

A. That is correct.

Q. Do you say that is your profit and loss statement?

A. No, sir. Those are operating figures. They are figures which appear on the profit and loss statement.

Q. They are part of the figures that appear?

A. That is correct.

Q. There are other charges against the operation than those shown here?

A. Other charges on the corporate statement, not part of the printing operation.

Q. The two major items, payroll and newsprint, on the operating statement of Acme are higher cost items than those projected on our projection, is that true?

A. That is true.

Q. Yet you have the hardihood to come here and challenge our projection in the face of the fact that your own operating statement has higher figures for the same cost items,
1021 right?

A. I don't believe they are the same cost items.

Q. The same category?

A. The same category, yes, sir.

Q. All right, now getting back to the newsprint. Have you computed the newsprint cost to us at Sylacauga as comprehended by our Projection 2 even on your assumption that it could be purchased for \$132.00?

A. I did, yes, sir.

Q. Where is the working papers that was worked out on?

A. It may be in my bag. I didn't bring it to the stand. It is outside the rail by my coat.

(Thereupon, briefcase referred to was delivered to the witness.)

By Mr. RAICHLE:

Q. Have you got it?

A. I believe so.

Q. May I see it, please?

(Document shown to Mr. Raichle.)

The WITNESS: I believe the computations here—there is the four ten million per year; $47\frac{1}{2}$ lbs. per thousand; consumption rate 9700 tons per year.

Mr. RAICHLE: I would like to have this marked for identification.

The COURT: We will mark it as soon as Mr. Ciccarelli comes back.

Mr. RAICHLE: All right.

By Mr. RAICHLE:

Q. What else do you have in the bag there?

The COURT: We will mark that now, Mr. Raichle. Do you want to hand that up? Mr. Ciccarelli will mark it as an exhibit for identification. You have no objection? Do you want that in evidence, Mr. Raichle?

Mr. RAICHLE: No, just marked for identification.

The COURT: All right.

(Thereupon, Document referred to was marked Defendants' Exhibit D-1 for Identification.)

1023 By Mr. RAICHLE:

Q. Now, are these all your working papers here?

A. Everything I have with me from the West Coast, yes, sir. No—I do have some comic sections here. Would you like those?

Q. Yes, what are those?

A. These are copies of newspaper comic supplements.

Q. Printed by Acme?

A. No, sir.

Q. By whom?

A. I don't actually know.

Q. What is this thing here, this paper here?

A. This is material given to me by Mr. Feldman. Perhaps there is a letter to identify it.

Q. This one here, where it says "Determination of Pressmen's Rates for 1962", what is that paper?

A. I don't know what plant that refers to, sir, unless it says in his letter. It doesn't say there.

Q. What letter are you referring to?

A. I think the letter is attached.

Q. I see he sent you copies of our collective bargaining agreements with the union?

A. I believe the paper you are asking me about is an excerpt from one of those. I am not sure.

Q. Those are not—

1024 A. Those are not my figures, no, sir. It was something that was sent to me by Mr. Feldman.

Q. You found that you paid journeymen the same as we did?

A. I wasn't able to tell exactly.

Q. Within a penny or two?

A. I believe your per-hour rate is slightly higher than ours—at International, as I recall it. They are very comparable.

Q. You got the rate scale at Dunkirk from Mr. Feldman and copies of the contracts with the union that we have, right?

A. He sent me all of that information there. Not that piece of paper.

Q. What is that?

A. That refers to the cost of power at our plant in California.

Q. Out there where the weather is good, right?

A. Yes, sir.

Q. Now, Mr. Feldman, in his letter of November 15, 1962, is describing this press. Is that the source of your information as to the press at Sylacauga?

A. Originally that was the source. I had to get additional information.

1025 Q. What additional information did you get?

A. After I arrived in Buffalo and asked him some questions about the press—that explanation in the letter wasn't sufficient—he let me read from—I think it was Mr. Gorman's deposition which contained Mr. Gorman's description of the press.

Q. And you told me yesterday you didn't change any figures after you came to Buffalo?

A. That is correct, I did not.

Q. And at the time you made up the figures you didn't have a sufficient description of the press, you say?

A. That is true.

Q. All right. You didn't know the capacity of the press?

A. The specific point on which I was not clear was the number of cylinders or printing couples.

Q. What is the significance of the cylinders; it is directly related to the capacity of the press, isn't it?

A. That is correct.

Q. So without knowing anything about the capacity of the press, you made up the figures which you brought here and copied on Sunday, right?

A. No, sir.

1026 Q. Well, you told us you didn't change any figures, you simply copied them when you got here, didn't you?

A. I found that the figures I had made up on the basis of the incomplete information were acceptable when I had the complete information. I did not change them.

1027 Q. Acceptable to whom?

A. To me.

Q. All right. I notice you don't use the word "correct" when describing your figures?

A. I did not.

Q. Now, I notice in the correspondence from Mr. Feldman which you showed me there, that he didn't make any request that you concern yourself with Projection No. 1. Did you notice that in his letters?

A. I didn't notice it, no, sir.

Mr. RAICHLE: I am almost through, Your Honor.

By Mr. RAICHLE:

Q. The matter of repairs are simply a question of how much you want to keep up your machinery, isn't that true?

A. I don't believe I could accept that, no, sir.

Q. You wouldn't be stubborn, would you?

A. I hope not, sir.

Q. The better the machinery, the better the job, isn't that so?

A. Generally speaking, I would say yes.

Q. And you have had complaints about yours, haven't you?

1028 A. You are speaking now of our machinery?

Q. Of your job.

A. Oh, yes, indeed, sir.

Q. In fact, you have had a number of complaints and they have been growing in numbers, isn't that so?

A. I am not aware of any increase.

Q. Just the time honored high volume of complaints, right?

A. I would say the rate is perhaps slightly lower than it has been in the past.

Q. Now would you answer this question yes or no; has it ever occurred to you that those complaints could be reduced in number if you spent a little more money in repairing your machinery, yes or no, please, has that occurred to you?

A. I think it has occurred to me, yes, sir.

Q. But you haven't made the expenditures, have you, additional expenditures?

A. Yes, sir, I would say we have.

Q. I see. So that the matter of repairs of machinery fluctuates year by year, is that right?

A. It would vary, yes.

Q. And it depends on the age of the machinery, it depends on the hours of use to which it is put, doesn't it?

1029 A. Oh, yes.

Q. It depends upon a host of factors which is unnecessary to itemize one by one here in the course of your examination?

A. There are many factors.

Q. Now, you have seen none of the machinery involved in the Sylacauga operation, have you?

A. I have seen none of it.

Q. And you haven't seen the machinery at Wilkes-Barre or Newburgh News, as you call it, or at Lufkin.

A. That is correct.

The COURT: Let me ask you, are you technically equipped to know these things, these printing plants. Are you in any manner an engineer?

The WITNESS: No, sir, I am not an engineer.

The COURT: I mean, do you recognize the problems? I take it that the press at Sylacauga is much more complicated than yours.

The WITNESS: It is different in this sense.

The COURT: Do you know it technically, do you know what was wrong with it?

The WITNESS: Yes, sir.

1030 The COURT: In other words, if it broke down you would know why it broke down yourself?

The WITNESS: I couldn't say that, sir.

The COURT: If it wasn't turning out a good product you would know why it wasn't turning out a good product, is that right?

The WITNESS: Perhaps, it depends. In many cases, yes and some cases, no.

The COURT: Well, it is a more complex machine than your press. You told us yesterday you had a little press with different kinds of plates and you made the differential in your press rather than at Sylacauga, you had a large circulation, is that right?

The WITNESS: Large circulation, that is the big factor, yes. I don't believe the difference is in the machinery as a matter of complexity, it is the difference in speed.

The COURT: The only thing I want to know is do you personally know the problems of this Sylacauga press?

The WITNESS: If I understand the description of Mr. Gorman's definition, I believe I do.

1031 By Mr. RAICHLE:

Q. Did you ever see a press exactly like it?

A. No, sir.

Q. Much less, did you ever try to operate one?

A. No, sir, I am not a pressman.

Q. Did you ever see anybody else operate one like it?

A. Yes, in the sense that the presses are the same type of equipment. I have never seen anyone operate a five-plate wide machine.

Q. And you don't know the problems introduced by the additional plates, do you?

A. I believe I understand them.

Q. You believe you do.

Mr. RAICHLE: I would just like to ask my colleagues something.

By Mr. RAICHLE:

Q. All right, let's get back to your newsprint now. You arbitrarily took a figure or assumed a figure of \$132.00 a ton, al-

though you don't know anybody who gets it for that, which you said. Now, that is the price you took, right?

A. I assumed that the net costs at the printer's plant
1032 of \$132.00 a ton on the basis of his picking up the paper at the mill.

Q. Do you know how much it cost him to pick it up?

A. I do not, no.

Q. It costs something, doesn't it?

A. Oh, yes.

Q. And how much less than the freight rate you don't know, do you?

A. Well, I assume \$3.00 there. I assumed his net saving would be \$3.00 a ton.

Q. All right. But you don't know anybody who has effected such a savings anywhere in the industry, do you; yes or no?

A. I can't answer that yes or no.

Q. You are under oath and I ask you the question, do you know?

A. If I read an affidavit, does that constitute knowledge?

Q. I am going to ask my question in my own way.

Mr. FELDMAN: I object at this time, if the witness can't answer yes or no.

Mr. RAICHLE: He knows whether he does or not. Just because it is an adverse question he does not have to be molly-coddled.

The COURT: You have a source of information which
1033 is the affidavit form and that is a source of your knowledge; you can answer it.

The WITNESS: Thank you, sir. Yes, I do know.

By Mr. RAICHLE:

Q. Someone who is actually receiving it?

A. Yes, sir.

Q. All right. Where is the affidavit? Are you referring to this affidavit of Mr. Richard J. Appert, which Mr. Feldman has just handed to me, dated the 11th day of December, 1962?

A. May I see it? Yes, sir, this is the affidavit I referred to.

By Mr. RAICHLE:

1034 Q. When did you first see it?

A. Last night.

Q. When did you first know of its existence?

A. Yesterday in court.

Q. But you made your assumption on the basis of the affidavit before you even knew of its existence, is that right?

A. No, sir.

Q. Well, you made it when you made these figures up which you brought here, isn't that true, which you copied on Sunday?

A. Yes, sir.

Q. Where on the affidavit is the figure \$132.00? Point to it, please.

A. It is not mentioned.

Q. No, it is clear from this affidavit that there is an abundance of newsprint, isn't it?

A. Oh, yes.

Q. All right, now I read to you from page 3. "The newsprint produced at the division's mill is now generally quoted for sale at a price of \$135.00 per ton with full freight, but not exceeding the lowest carload rate allowed to destination." Do you see that?

1035 A. Yes, sir.

Q. That doesn't say 132, does it?

A. No, sir.

Q. Do you know anything about the cost of trucking newsprint?

A. In California, yes, sir.

Q. You don't know anything about the cost of trucking it down here in the vicinity of this river—the same river which yesterday you said you didn't know whether it ran north, south, east, west or where it was?

A. I do not know the truck rates in Alabama.

Q. So that, in addition, if there is to be a saving over \$135.00, it is an assumed amount by you, isn't it?

A. That is correct.

Q. And to make a correct assumption on that subject wouldn't you have to know something about the situations prevailing in Alabama?

A. Well, in order to be exact, yes.

Q. And you don't know yourself whether there is any such saving possible, do you?

A. Only my opinions.

Q. Only your opinion, and is your opinion based on this affidavit?

1036 A. No, sir.

Q. There is nothing in that affidavit upon which you could base such an opinion, is there?

A. I believe there is, sir.

Q. Point to it.

A. May I read it?

Q. Thought you had read it.

A. Paragraph 3—I am sorry, it is paragraph 4, is the one I am referring to.

Q. All right, read it.

A. "There are instances with respect to customers located near the division's mill where such customers take delivery of newsprint at the mill door and, in connection therewith, are allowed freight at the rail carload rate to the customer's location. Examples of such pick-up allowances are \$3.70 per ton for customer transported shipments to Birmingham, Alabama and", \$590.00 per ton, I am sorry, "\$5.90 per ton for customer transported shipments to Atlanta, Georgia."

Q. All right, the customer who picks it up that way has to find some other means of getting it to the plant. Isn't that so?

A. Yes, sir.

Q. And so far as you know, the truckers are not
1037 free down there, are they?

A. I don't know, sir.

Q. Well, you are under oath, you know it would be costly.

A. There certainly would be some expense involved, yes, sir.

Q. And how much you don't know?

A. No, sir, I do not.

Q. And have you seen any rates?

A. No, sir.

Q. Have you sought to find out what the rates are down there for such trucking?

A. No, sir.

Q. Well, now we'll get back to this newsprint thing in a little different way. What do we project for this newsprint? Have you got it there?

A. I did not calculate your per ton cost. I could not.

Q. No, you couldn't. Would you be surprised to know that our per ton cost figured in our projection is less than what you are talking about on the basis of \$132.00?

A. I would, sir.

Q. You would?

A. I would be surprised.

1038 Q. Would you have any answer for it, if I demonstrate that to you?

A. Then it must be that the consumption rate in pounds per thousand also is less than the one I used. I am sorry, consumption rate would have to be higher.

The COURT: You mean less loss or waste?

The WITNESS: I mean they would use more pounds of newsprint up than I thought they would, in order to produce a given number of pounds.

By Mr. RAICHLE:

Q. If our projection involved a newsprint cost less than yours, you would have no answer for it at all, would you?

A. Only what I just said.

Q. Now, that \$3.70 referred to in the affidavit and I suppose for completeness we better mark the affidavit for identification—

(Whereupon, affidavit was marked Defendants' Exhibit D-2 for Identification.)

1039 By Mr. RAICHLE:

Q. The \$3.70 per ton relates to the railroad rate from the mill to Birmingham, right?

A. That is my understanding, yes, sir.

Q. And the \$5.90 represents the freight rate from the mill to Atlanta, Georgia, right?

A. Well, it has some relation to the freight rates.

Q. Well, you say in the one instance it reflects the freight rate and in the other instance you say it has some relation. It is the same thing in both cases, isn't it?

A. I don't believe I could say that it is the freight rate on the basis of this. It has some relation to the freight rates.

Q. Well, is it more or less than the freight rate?

A. It is not possible to tell that.

Q. Do you know whether the trucking down there under the conditions prevailing is more costly than rail shipment or not? I am asking you, if you know?

A. I do not know.

Q. Have you sought to find out?

A. No, sir.

Q. I have just one thing and then I will be through.

Now, if you will just do one computation on this newsprint for me—

1040

Mr. RAICHLE: We are making a computation, I am going to ask the witness to check it.

By Mr. RAICHLE:

Q. Now, Mr. Witness, if you will please be good enough, do you have a pencil?

A. I have a pen, sir.

Q. Well, something to write with, legible to you and convenient for your use; would you take your \$132.00 assumed figure, which nobody gets, as the price per ton and divide that by 2000?

A. I have done that, sir.

Q. And what did you get?

A. 6.2 cents.

1041 Q. Would you do it again, please? Don't you get 6.60?

A. You are correct, sir, six and two-thirds cents.

Q. Is that because you are so used to doing these things by machine that you made these mistakes?

A. I hope so.

Q. That represents what, that 6.60?

A. That is the cost per pound.

Q. Now, you said there was $47\frac{1}{2}$ pounds to make up a thousand fours?

A. Yes, sir.

Q. Will you multiply that 6.60 by $47\frac{1}{2}$?

A. I get \$3.13 $\frac{1}{2}$.

Q. Well, all right. Now then, you get thirteen what?

A. \$3.13 $\frac{1}{2}$.

Q. All right. Now, that represents what?

A. That is the cost per thousand fours.

Q. And that is what you think it should be, isn't it?

A. Approximately, yes, sir.

Q. Exactly; I am using your formula, $47\frac{1}{2}$ pounds.

A. That is my best estimate.

Q. All right. Now then, will you make another computation? Will you put down \$5.585 and take 56 percent of that?

A. Do you want the answer?

1042 Q. Yes, please.

A. Three dollars, twelve and three-quarters cents.

Q. Let me invite your attention to something. On our Projection No. 2, the one which you intimated you criti-

size as to the cost of newsprint, do you notice we take the figure 56 percent?

A. I see that figure, yes, sir.

Q. You saw it before, didn't you?

A. Yes.

Q. You, at all times, have been familiar with the fact we allocated to newsprint in the projection, which we are discussing, 56 percent, right?

A. Yes, sir.

Q. Now then, you claimed yesterday that our newsprint item was too high, didn't you?

A. That is my best judgment, yes, sir.

Q. Now, right here in the presence of His Honor, you have figured out that on the basis of your own formula, 47½ pounds per thousand fours, at the \$132.00 price that you are talking about, works out to a little more than 56 percent, being the difference between the \$3.12 on our part and \$3.13 on yours, is that so?

A. It is about a quarter of a cent difference.

1043 Q. Otherwise, my statement just made is correct?

A. Yes.

Q. Therefore, our newsprint projection is substantially the same and even a little less than the cost resulting from the operation of the formula which you say is the proper one and which you use, is that true?

A. No, sir.

Q. Well, where is that machine of yours?

A. May I explain?

Q. Where is this machine, is it in town?

A. It is in California.

Mr. RAICHLE: We can't get any help from that. That is all then.

REDIRECT EXAMINATION

By Mr. FELDMAN:

Q. You just answered no to the last question. Will you explain why?

A. Well, the revenue figure, which I also judged to be unmeaningful, was used in the last computation.

Q. Did you find objection to the revenue—

Mr. RAICHLE: The revenue figure, do you mean the \$5.00?

Mr. FELDMAN: He is talking about the total revenue of the projection.

1044 The WITNESS: I mean the \$5.00.

Mr. RAICHLE: You fellows are not together.

Mr. FELDMAN: Will you repeat the last question and answer?

(Thereupon the last question and answer were read by the reporter.)

1045 By Mr. FELDMAN:

Q. When you referred to the revenue figures, Mr. Lynde, I now show you Exhibit A, what were you referring to?

A. It is the average revenue per thousand fours of \$5.58 1/2 cents.

Q. How is that derived, sir?

A. That appears in the notes attached to Projections 1 and 2.

Q. I know, but it tells you certain figures from where that was derived from?

A. Yes, sir.

Q. What were the two figures which formed the basis to give you that \$5.00?

A. It is an average of a group of other runs not identified by name, but they are identified as the runs making up the Projection No. 1, the production under Projection No. 1 and that same average is applied to the additional runs to be produced under Projection No. 2.

Q. Am I correct then, in stating that yesterday your testimony was that you found objection to using the same average in regard to Projection No. 2, is that correct?

A. That is correct.

1046 Q. Now, will you please state the reasons here now?

A. Well, the reason is this; the process of making projections or statements is at best an approximation, no matter who is doing it. We are dealing in exact, therefore it is a matter of basic procedure in doing this to make the best possible use of any information made available to you in order to minimize the error. This is standard procedure. I don't feel in this case maximum use was made of the best available information, because an average of some other printing jobs is what it is, rather than these specific jobs involved, that was used in Projection No. 2.

Q. Now, you have before you certain supplements, is that correct, Mr. Lynde?

A. Yes, sir.

Q. Now, you repeat again where you got those supplements?

A. I received these from you.

Q. Was that pursuant to your request?

A. Yes.

Q. What exactly did you ask me?

A. I asked you if you could identify for me and get me some description of the additional printing runs which would
1047 be transferred to Sylcauga and would make up the additional production described under Projection 2.

Q. Now, pursuant to that request I sent you those supplements that you have before you?

A. Yes, sir.

Q. Now, in looking, picking up one of the supplements before you, take the first ones, I ask that in holding one of the supplements before you, Mr. Lynde, what use can you make of that supplement in regard to the projection, or Projection No. 2?

A. I did not make use of these supplements.

Q. But if you had such a supplement before you and knew that that constituted part of the Projection No. 2, what use could you make of that supplement?

Mr. RAICHLE: Wait a minute, it does not constitute a part of Projection No. 2, that is the point.

Mr. FELDMAN: I am asking him to assume that.

Mr. RAICHLE: He is assuming something contrary to the fact.

The COURT: I will overrule the objection. You do have such knowledge?

The WITNESS: Yes, sir. There are some items of information—several items of information about the runs here
1048 which would be helpful to anyone trying to project the cost of producing them. The circulation is probably the most useful thing; the size, the number of copies to be printed for each newspaper.

By Mr. FELDMAN:

Q. Excuse me. Now, knowing the name of the particular newspapers, are you able to find out the circulation?

A. Approximately.

Q. Where would you get such information?

A. There are trade journals which give this information.

Q. All right. Now, the next item.

A. The number of pages to be printed in this section, whether in this case 10, 12, 16, 18, whatever it is.

Q. What bearing would that have, if any?

A. Well, the use of the press, the efficiency of the press in printing the run would vary according to the number of pages being printed.

1049 Q. Now, the fact that there are smaller pages in some runs and larger pages in other runs, would that have a bearing?

A. Not insofar as the thing we are talking about now, no.

Q. All right. Now, what is the next factor?

A. The degree of similarity among the group of runs as to the specific features being printed. In other words, how many times does Dick Tracy appear here; what degree of tie-in do we have from the run to another.

Q. That would have a bearing, would it, on the cost?

A. Yes.

Mr. FELDMAN: At this time I would like to offer in evidence this affidavit from Mr. Appert, from the Kimberly-Clark Corporation.

Mr. RAICHLE: Sure, it is all right with me.

The COURT: All right, mark it received.

(Thereupon, the Affidavit referred to previously marked D-2, for Identification was received in Evidence as 1050 Exhibit G-3.)

By Mr. FELDMAN:

Q. Mr. Lynde, I show you Plaintiff's Exhibit G-3 and now ask you, will you start from the beginning, tell us whether or not you wish to change your testimony in regard to what the price of newsprint would be in your opinion under Projection No. 2 in regard to the exhibit before you, in regard to the information of the exhibit before you?

A. No, sir, I do not wish to change it.

Q. All right. Now, does the exhibit before you furnish you with any information which would support the opinion of which you gave yesterday?

A. Yes, sir.

Q. All right. Now, will you start from the beginning and tell us what information that exhibit imparts to you and why it would support the opinion you gave yesterday?

A. The affidavit indicates—

Mr. RAICHLE: I have to object to any such question as that. The witness, be he expert or otherwise, saying, "This subject substantiates what I say", that is for Your Honor to decide.

The COURT: I will have to take this as asking for a conclusion in testimony; objection sustained.

Mr. FELDMAN: Would you tell us, Mr. Lynde?

Mr. RAICHLE: I thought he was sustaining the objection.

The COURT: I sustained the objection.

Mr. FELDMAN: Oh, all right. I have no further question.

The COURT: May I ask a question. Are you fairly familiar with the operation of this man Hornaday of Southern Color Print, the nature of his operation?

The WITNESS: Very generally, sir.

The COURT: Let me ask you this; last April, as you know, I had a temporary injunction here with respect to the transfer of any run from Wilkes-Barre down to Sylacauga. In my permissive opening of that plant and to my surprise, frankly, I have now learned that Hornaday has increased his output four

times, all of which virtually came from Wilkes-Barre, the International Color Print. Now, you have been in the business ten years. Can you give me any reason why that could come about, that he would be able to take that market over from Wilkes-Barre in the fashion that he has?

The WITNESS: I do have an opinion, sir. It is only that.

The COURT: I would like to have that, if founded upon some experience.

The WITNESS: It is founded upon general trade conversation mainly.

The COURT: You mean rumors of the trade as to what he did?

The WITNESS: Pretty much.

Mr. RAICHLE: I don't object to it.

The COURT: All right, let me have it, what you hear in the trade and if you have a source, let's have the source.

The WITNESS: Well, there have been a lot of conversations. I don't know as I could identify anyone.

1053 The COURT: Is it a pretty well agreed-upon version of what happened in the trade, from your point of view and there is no objection to that?

Mr. RAICHLE: Not a bit.

The WITNESS: I believe so. I have only heard one theory.

The COURT: All right, let me hear it.

The WITNESS: Well, Mr. Hornaday's own personality and background and as a salesman, his salesmanship, are a factor. I think he has personal relationships with the publishers that have been a major factor in this. This is one thing. Coincident with Your Honor's restraining order, or injunction, whether as a result of it or not, I don't know, but coincident with it, there was, according to the trade rumor, a ceasing of some types of business operations that had been going on, specifically with reference to truck transport, which removed some bearing that had stood in the way of Southern Color Print before that time.

1054 The COURT: I don't understand that. Will you tell me what you mean?

The WITNESS: I guess it is what the Government calls predatory practice. I don't really know.

The COURT: Well now, let me ask you, is that your explanation?

The WITNESS: That is the best I can do, sir.

The COURT: Now, Hornaday, you heard his deposition yesterday, said that if certain alleged predatory practices cease and are no longer permitted, tie-in sales permitted or indulged in, that he fears no competition from Sylacauga; he would welcome it, but he has nothing to worry about in order to continue the enterprise which is doing well as I mentioned, four times over in a few months' period. Now, do you, having
1055 had your experience in the business, believe that or don't you have an opinion?

The WITNESS: I know he said that, I heard the testimony. If I were in his position I would fear the reopening of Sylacauga. I would not welcome it, but in the fair competition, you can't reasonably object to it. I don't know what the man meant.

The COURT: I just wanted your opinion. I appreciate, Gentleman, that I am not talking in a legal fashion here. I want the opinion of the man in the business, to the extent he is able to give it. All right, that is all I have.

Mr. RAICHLE: Just a question or two suggested by His Honor's inquiries.

RE-CROSS EXAMINATION

By Mr. RAICHLE:

Q. You don't object to competition as such, do you?

A. Well —

1056 Q. As such?

A. No, sir.

Q. And if someone were tomorrow or the next day, figuratively speaking, to construct and operate a plant comparable to yours and compete with you in your presently favored geographic area, that is the area where you are presently operating, you would have no objection, you might wish they would not, but you would have no objection, would you?

A. I think we would welcome it in a long sense.

Q. In other words, you subscribe to the proposition that in your business competition is wholesome and healthy?

A. Absolutely.

1057 Q. And given the absence of predatory practices of one kind or another, competition as such is not to be feared, not to be objected to. Isn't that true?

A. I believe that.

Q. Yes, and you have had competition from Lufkin in certain restricted areas of your operation, haven't you?

A. Apparently not very restricted, sir.

Q. Well, you don't object to it?

A. We don't feel that we have any basis for objection. We are not happy about it.

Q. That's right. Now you know of no basis for objection that Mr. Hornady could possibly have or that Southern Color Printing Company has in the absence of predatory practices, do you?

A. I have none, no, sir.

Q. And did you hear that part of Mr. Hornady's deposition where he said he could think of nothing wrong that Greater Buffalo Press or International Color Printing Company had ever done?

A. Yes, I heard that.

Q. And did you hear his admission that the predatory practices were those which it is alleged he engaged in while he was with King Features?

1058 Mr. FELDMAN: I am going to object to the question Your Honor. This is getting into previous testimony in the deposition and —

The COURT: Overruled.

By Mr. RAICHLE:

Q. You heard that, didn't you?

A. I heard all of the deposition, I believe, sir. Yes.

Q. So now, getting back, and I am not going to go through these figures again, but on your exhibits if I may borrow G-1 and G-2—maybe I am guilty of having it. Here they are. I have them, I am sorry. Now, Mr. Lynde, when you said that the revenue figure wasn't meaningful in our Projection No. 2 or that in substance, I notice you made no change in it on your projection, did you?

A. I did not.

Q. And you changed the figures with which you disagreed, didn't you?

A. Well, I disagreed with all the figures I changed.

Q. Well all right, was there some reason for not changing your revenue figure, although you changed all the others with which you disagreed?

1059 A. Well, I don't have basis for adjusting that figure. I don't have the information.

Q. That is just the point. It was clear from the projection itself that the revenue figure assumed was a multiplication of the average per thousand received by Greater Buffalo Press with respect to those Dunkirk runs which were permitted to be transferred, isn't that true?

A. That is what it says.

Q. It says so frankly, openly and plainly, doesn't it?

A. Yes, sir.

Q. In the notes. Now, if you will ascribe or apply the 56 percent figure against the \$5.58½, the average per thousand, you get the \$3.12 which is one cent less for newsprint than the \$3.13 you were talking about, right?

A. I believe there is only a quarter of a cent difference.

Q. Well, let's say it's the same.

A. For all practical purposes, it is the same.

Q. So then our 56 percent figure on that basis cannot be challenged, can it?

A. If the revenue figure is correct and the 56 figure is correct, the newsprint figure is correct.

1060 Q. But, if the newsprint figure which you give is the same as the 56 percent made to this revenue figure, in

the absence of a challenge to the revenue figure, you can't challenge the resulting \$3.13, can you?

A. But I do challenge the revenue figure.

Q. You are assuming that there would be a higher revenue?

A. Not necessarily.

Q. Are you assuming that there might be a lower revenue?

A. I am assuming there is a better way to project the revenue than the way that was used.

Q. And if you knew a better way, you would have projected it, wouldn't you?

A. If I would have had the information, I would, Yes, sir.

Mr. RAICHLE: That is all.

The COURT: Let me go back a minute for some information on the Southern Color Print. You said there were certain trucking practices, I believe you said which had a bearing with those who do business competitively, which heretofore existed.

1061 The WITNESS: That is my understanding.

The COURT: I don't know what you mean by that. What was the alleged practice?

The WITNESS: I am repeating conversations and rumors.

The COURT: Something in the trade, in the current trade?

The WITNESS: These things go back three or four years.

The COURT: Tell me what your theory as to why this was an unhappy practice, whatever it was, is, insofar as competition is concerned.

The WITNESS: My understanding is that there was some arrangement for transporting the comics over the distance from the northern plant to the southern newspaper.

The COURT: What northern plant?

The WITNESS: Well, any of the three, I presume.

The COURT: Are you talking about International?

The WITNESS: International, Dunkirk, Greater Buffalo. In the case of the runs which were gained recently by Southern Color Print, it would be International, or Eastern.

1062 The COURT: A method of transporting by truck, you say, the finished products?

The WITNESS: Yes, in some way, which in some way overcame the geographical advantages which Newsport News would otherwise have enjoyed. Now the details, I do not know.

The COURT: Isn't that just good business practice?

The WITNESS: It certainly may be. I don't know.

The COURT: I mean if somebody can compete with you by getting a better method of transportation, and it is without tie-in, is there any complaint to be had with that?

The WITNESS: Not what you have said, no, sir.

The COURT: Do you know anything more about it?

The WITNESS: Only it doesn't make economic sense to be able to haul a thousand or so miles at no more expense than you can haul ten or twelve miles, that is all.

The COURT: All right, but you still have got to make a profit some way to run a business, is that right?

1083 The WITNESS: Certainly must make a profit over all.

The COURT: That is all I have. Take a recess.

(Whereupon at 11:40 a.m. a short recess was taken.)
Proceedings resumed pursuant to recess, commencing

1064 at 12:00 noon.)

Mr. RAICHEL: If I am thinking clearly and keeping track of things, the case comes back to me, or is still with me, the witness having been sworn out of turn. By the way, I have no objections to accommodating any other witnesses you may have if you want to put them on out of turn.

Mr. FELDMAN: No, I have none.

Mr. RAICHEL: I would offer then, your Honor the transcript of the proceedings before Judge Lloyd F. McMahon in the Southern District, that is, the United States District Court for the Southern District of New York on November 20, 1962, which relates to the service of the subpoena and the affirmations of the witness, Hornady and the Court's findings.

The COURT: Any objection?

1065 Mr. FELDMAN: Yes, I do object. I feel that isn't a part of this proceeding. This took place in the Southern District of New York. The only thing before this Court is the particular deposition, what took place at that deposition.

The COURT: His credibility is in issue, isn't it?

Mr. FELDMAN: The record on its face is not complete. There are probably affidavits which were part of that proceedings.

Mr. RAICHEL: I will offer all the moving papers and the affidavits.

Mr. FELDMAN: I have no objection.

The COURT: All right, received.

(Thereupon, transcript referred to was marked Defendants' Exhibit D-3 in evidence.)

Mr. FELDMAN: Are those all of the moving papers, the other side also?

Mr. RAICHLE: These are the motion papers of Mr. Hornady and his counsel, in my right hand are the answering affidavits.

Mr. FELDMAN: The record is complete then, is that right?

Mr. RAICHLE: Yes.

(Thereupon, documents referred to were marked Defendants' Exhibits D-3A and D-3B in evidence.)

Mr. RAICHLE: Conceiving that I have made out a direct case in that my motion papers, the form of the affidavits, have not been controverted or disputed, there exists, as I see it, grounds for appropriate findings by your Honor on which to vacate or substantially modify the order of June 22, 1962, and I would rest. I am doing so—I have in mind that this testimony of this last witness, as recorded, is subsequently to be offered by the Government, and then I will reach a conclusion as to whether I wish to rebut.

The COURT: Yes.

Mr. FELDMAN: Well, I gather then your Honor does not want to hear any arguments?

The COURT: I want you to finish your proof, whatever you have in mind.

Mr. FELDMAN: Yes. Before continuing then, the Government would like to have made part of the record the requests which the Government made upon counsel for the defendants for certain information in connection with this motion. We have agreed that we will make the demand upon the defendants and counsel for the defendants agreed to supply us with the information in lieu of any motion being made by the Government.

I have that specific request here, and I also would like to have form part of the record a letter from Mr. Raichle, addressed to me, in which he states that in regard to the information requested in 2A which requested the particular runs in Projection No. 2, or which were considered in Projection No. 2, he stated that the figures set forth there do not derive from specific runs at International Color Printing, is that correct?

Mr. RAICHLE: No objection on that, this is the fact.

The COURT: All right.

(Thereupon, documents referred to were marked Government's Exhibits G-4 and G-5 in evidence.)

Mr. FELDMAN: Mr. Smith, please?
 ROBERT E. SMITH, called as a witness in behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. FELDMAN:

1069 Q. Mr. Smith, will you please state your name for the record?

A. My name is Robert E. Smith.

Q. Where do you live?

A. I live in Newport News, Virginia.

Q. And what is your employment or occupation?

A. I am General Manager of the Daily Press, Incorporated, which publishes two daily newspapers in that city. I am also General Manager and Assistant Treasurer of the Southern Color Print Corporation, a wholly owned subsidiary of Daily Press, Incorporated.

Q. In regard to Southern Color Print Corporation, what are your duties?

A. My duties at the Southern Color Print Corporation is to see that the corporation affairs are moving along in satisfactory fashion. That includes checking on the production and the acquisition of new work, and the negotiations of all labor contracts with unions that we have at the plant.

Q. Are you acquainted with the production facilities at Southern Color Print?

A. Yes, sir.

Q. Will you describe the facilities available at
 1070 Southern Color Print Corporation?

A. At the present time we have a very modern building, a one-story affair, with a press room and stereotype department, and a suite of offices, locker rooms, warehouse facilities, loading platforms, and so forth. Included in the equipment are two presses in the press room, and in the stereotype department we have the usual stereotyping equipment that would be required for a plant.

Q. Now, do you have anything to do with the selling end of the supplements printed at Southern Color Print Corporation?

A. No, I have nothing to do with the selling end of it since that was turned over to Atlantic Features seven years ago.

Q. Are you kept informed, in the regular course of your business, as to selling activities?

A. I check on the activities with respect to submission of prices, and so forth, but Mr. Hornady of Atlantic Features does the selling. I do nothing of that.

Q. Is he responsible to you, Mr. Hornady?

A. No, sir.

1071

By Mr. FELDMAN:

Q. Now presently, how many volumes—I mean, what is your production in terms of volume of fours per week?

A. In production at the present time, something around two and a half million fours per week, which will be increased to approximately three million when the Norfolk run goes in in March.

Q. And about six, seven months ago what was your volume of production?

A. It was approximately or slightly under two million.

Q. Now going back to 1961, what was the volume of production then?

A. A million eight hundred thousand.

Q. That is the beginning of the year, is that correct?

A. That is right, yes.

Q. And during the preceding year, had Southern Colorprint acquired new business or increased its volume of production? That is, going back to 1960?

A. 1960, the only contract we received in that year, in 1960 was Rome, Georgia, which was in January of that year. We received no more during 1960 and none at all during 1072 1961, and, in March of 1962, we started printing. I believe it was Macon, Georgia. Two started in March; one was Macon.

Q. Now since April, 1962, how many new runs have you acquired?

A. That is April of this year?

Q. Yes, that's right. Well, supposing we go back to April, 1961, how many runs have you acquired?

A. That is five runs, two of them at one newspaper plant.

Q. And what about the Norfolk run?

A. Norfolk is another one, hasn't started yet. That makes six.

Q. By next March you will have six runs, is that correct?

A. Yes.

Q. And by March, what will your volume of production be?
 A. I estimate around three million.

Q. Now in the past has Southern Colorprint ever had a run of production of three million?

A. No, sir.

Q. Now at the present time, what is the full printing capacity of Southern Colorprint?

A. Why, I would estimate we are running about half capacity.

1073 Q. At the present time?

A. We are running three shifts five days a week, and on a five day basis, that would be half capacity. We can run on Saturdays if we want to, but we are not running half.

Q. And with the acquisition of the new run in next March, will your percentage or you will be operating at less capacity, won't you?

A. Oh, it will only increase it a couple days, a couple of shifts.

Mr. RAICHLE: I didn't get that.

Mr. FELDMAN: I mean, you would be operating at more capacity.

The WITNESS: Not much more than we are now on a percentage basis.

By Mr. FELDMAN:

Q. No, I asked you originally what capacity you are now operating at?

A. Well, oh, at this point? In five days there is thirty shifts on it. We are running fifteen shifts now, so we are running half capacity.

Q. Of your total possible capacity?

A. That's right. Excluding Saturday. We can run on a Saturday but we have not done so.

1074 Q. Now in regard to the labor negotiations at Southern Colorprint, who handles that?

A. I handle that.

Q. And do you also handle labor negotiations for the daily press?

A. Yes, sir.

Q. Now based upon your experience, is there any relationship between the wage scales as to newspaper printing and as to printing in the supplement field?

A. Definitely there is a relationship.

Q. Now what is that relationship?

A. Well, the press itself is basically the same type of printing equipment. It may be a different make, different number of cylinders, and so on, but the press can turn out a regular newspaper or a regular comic section, so basically the operation of the press from the journeyman's and the pressmen's standpoint is very similar, but the men at the color plant must be more adept at matching colors and registering the plates, and he receives a printing wage over the scale of what we call the black and white in the downtown plant.

Q. Do you know if that is only true in your area, or do you have any knowledge whether it is true in other parts of
1075 the country?

A. My investigation at the time we negotiated and some material furnished by publishers or furnished by the union representatives shows a difference in the scale of printing between the newspaper pressmen and the color pressmen.

Q. Now Mr. Smith, pursuant to my request, did you examine and analyze Exhibit A to the defendants moving papers here, a statement of projected annual sales and net income, and I show you now Exhibit A?

A. Yes, I have seen this.

Q. Now what, if anything, did you do in connection with my request, tell me. Go along and tell us just what you did.

A. Prior to this time you asked me to look at some other figures, and before I had the chance to finish my studies of that, you told me you had another set of figures so I stopped that and went onto this set, and I recall that I was pretty busy about that time. You called and wanted to know if I had had a chance to complete the work, and I told you that I had been pretty well occupied and I had not finished it, but I wanted to do it myself

rather than leave it to anybody else. So I took it home
1076 and worked on it, and I decided that, after looking at this report, that it might be better for me, now this is

my own decision, because of the lack of time as much as anything else, that I would confine myself to Projection No. 1 since the estimated or projected annual production would be somewhat in our classification. So the Projection No. 2 I examined and made a study, but I made no conclusions because of
1077 lack of time.

Q. Well now, in regard to Projection No. 1, what is the first thing you did?

A. The first thing I did I—on Projection No. 1—is the first thing anybody would do. If you have a loss showing in the books and you are supposed to give an explanation and you are asked whether there is a loss, you have to see if the income would meet the expenses, and if the income was satisfactory and in order, then you look over the expenses and decide whether there were some items in there that could be questioned or curtailed or that seemed a little high and as manager of a plant it would be called to me to try to bring the expense in line and up to me to cut some of these items in here.

I would look at it at that standpoint.

The first thing I did was look at the sales and you furnished me with some information of the newspaper included in the runs and the runs down there, six newspapers and from that information that you gave me I was able to ascertain that the figure for the income was, well, I would say it would be almost correct. I mean, I was so close to the figure here I saw no reason to doubt the figure.

Q. In other words, for all practical purposes it was accurate?

1078 A. That is correct. I think I was a few thousand from that. That would be changed from the press run. These contracts were signed at a certain figure and during the process of a newspaper's growth they would order more and that would affect the total.

Q. Now, going—what did you do after that?

A. Well, I went through the production costs and of course, the big item in there, the big items in there are newsprint and payroll and those drew my attention first and I decided that the best way to make some comparison, since we were dealing with a projection or estimated plant, that wasn't an operation, the best thing to do would be to see how it compared with our plant, our actual figures; like reducing everything to one common denominator, and except for one figure, the average cost per thousand four-page sections in our plant—we have over eight pages in sections, so I reduced it to four-page sections to get a comparison of their cost per thousand against our cost per thousand—our actual figures for the ten months, January through October, the transition period during a modern-
1079 ization of the plant, a new press, and so on, I took those figures regardless of unusual expenses and made a comparison between the two.

Q. Now, you broke down first the figures in Exhibit A, is that correct, sir?

A. That is right.

Q. And I show you now and ask you whether this is the breakdown you made of that, is that correct, sir?

A. This is the breakdown I made and I did this calculation myself and this is the only sheet that I gave you, that I didn't typewrite. I typed everything else and it is—I did it myself—so I could say that I did it. Now, this is the breakdown, the per thousand unit—

Mr. FELDMAN: Excuse me, I will ask that it be marked as Plaintiff's Exhibit 6 for Identification.

(Thereupon, the Document referred to was marked Plaintiff's Exhibit G-6 for Identification.)

By Mr. FELDMAN:

Q. Now, what was the next thing you did, Mr. Smith?

A. The next thing I did, I took our figures for our 1080 figures for our run, this annual run here, 178,568,000 four-page units and in our ten months of our actual production, it is 101,000,000—

Mr. RAICHLE: Excuse me, do you have another copy of that, that I could have?

Mr. FELDMAN: I don't think I have another one.

By Mr. FELDMAN:

Q. Go ahead.

A. Over 100,000,000 units in ten months. I know that in ten months it is not a fair comparison, because I have to take the ten months' figures and divide them into fixed charges like taxes and insurance and depreciation and itemize them per thousand on that basis. If I had used an estimated twelve months I would have got it better.

Q. So you committed it to paper, didn't you?

A. I made a study of that, yes.

Q. Is this the paper?

A. Yes, that it is. That is Projection 1 in our actual ten-months period.

Mr. FELDMAN: I ask this be marked as Plaintiff's Exhibit 7 for Identification.

(Thereupon, Document referred to was marked Exhibit 1081 Exhibit G-7 for Identification.)

By Mr. FELDMAN:

Q. Now, looking at Plaintiff's Exhibit 7 for Identification, what does that indicate as to the work you did?

A. You want me to start with the top item and go down?

Q. Just give me a general description of what it represents.

A. It shows a comparison from the average cost per thousand four-page units, projection 1.

Q. What conclusion, if any, did you reach thereafter?

A. Well, it might be better to come—to sum it up.

Q. All right, find, do that.

A. Newsprint I found out their average cost was \$3.00 and .128 per one-thousand four-page units, which is \$0.14 under what our average cost is, \$3.27, and I concluded that with six runs in that plant they would not have as much waste as we would with 28 runs, so there is stoppage of presses and wasteage of paper and the price of \$0.07 a pound. Then the roll of paper might be narrower than ours and they are in close proximity to Coosa River; they might get a better price. I didn't say anything about the newsprint average price.

Q. You accepted that figure?

A. Yes, I accept that, because it was virtually what our price is within .02 of a cent of what our average price is.

Q. What did you do with regard to the payroll?

A. The payroll; I included the administrative in their payroll, since it is in ours. It gave them \$1.51 and ours is one—\$1.99; we were \$0.48 higher. I would think that would merit some attention. And 28 runs, stopping and starting the presses, changing plates, and so on and so forth, six runs on the press, four of a total page of ten and two of eight. It takes over 400 plates in our plant to plate up our 28 runs. That would call for more serious type of expense. Then, handling more shipments in the mailing room, keeping them straight, and so on, would require more attention there, so I can see where some reason for our expenses being higher. I am not questioning their figure on this, because I only wanted to find out how we stood on it.

Q. Now, what is the next item?

A. The next item is supplies and metal. Two things struck me in Projection 1 and 2 both, that startled me. First is that the item for supplies is \$19,946.00 and the item for repairs is the same thing and that would look kind of peculiar to me, that they would be exactly the same in Projection No. 2 for the bigger runs, supplies, repairs and the maintenance and upkeep, and so on, on the others and they looked

kind of funny to me, because they both have them with higher than our plant. We had a lot of repairs this year on the breakdown basis. The metal and supplies, putting metal with supplies, raised our figure to \$0.11 and there was already 11. We tallied exactly on supplies on a per-thousand basis. On repairs, their repair bill was more than twice ours. The next item was on the freight and express, which we take to be what we pay for our supplies and machinery and things we receive and our price is about 1c per thousand while theirs is almost 6c. I have no explanation for that, why the freight should be that much higher than in our plant, but we have it down that way. Now, the next item is power. I notice their power is heavier than ours and they say in the notes in here that the power is higher because

1084 of the necessity for more starts and stops and less efficiency in the arrangement of the runs. Well, we have to start and stop almost five times as often as they do in this projection, so power factor was a real puzzle to me, why it should be so much higher than ours. We have an item for gas, heat and water, that they seem to include in real estate. The telephone and telegraph, their figure was a great deal higher than ours. The breakdown is not much different. Postage is about the same on a per-thousand basis, although dollarwise a good deal higher. They have an item under "Employees' Benefits" and so I included our pension contributions and our life insurance and hospitalization that the company pays for, in with that and we came out close to their figure on a per-thousand basis. Depreciation was a terrific difference between theirs and our figure. I knew that ours is based on a formula that our management has held for years and I don't know what their formula is. Ours is projected on a long-term basis and our depreciation item is less than probably theirs, if theirs is on a faster rate. Theirs is \$0.28 a thousand and ours is \$0.08; they are \$0.20 a thousand higher in depreciation than we are.

1085 Real estate, taxes and insurance, they are almost three times what we are. On that basis, as I say, I don't know what is all included in that. The item says they include air-conditioning and heat, and so on, which I have as a separate item and we have heat down there too. We have taxes to pay and repairs and so on, and so their milling in Sylacauga is rated higher than our billing. I don't question their figures, whether they have worked that out on an accepted formula for rate of

depreciation, then they would probably be correct. I am not questioning that.

On the miscellaneous expense, why, there is a slight difference on that, but that is not material. The items I have grouped together, what we call cost of production items, is \$6.00 and approximately 2c per thousand units. Now, on ours it came out to about \$6.19, the difference leaving \$0.17 in the favor of the projection No. 1. We have in ours, which is actually a figure for ten months, although we are \$0.17 higher, we made a profit in that ten months period.

Q. Now, when you say \$0.17 higher, your figures are based on ten months?

A. Ten months, yes.

1086 Q. When you converted the ten to twelve months what would happen in proportion?

A. You would be increasing the run then by 20,000,000 more. 20,000,000 more figured into these figured charges, the depreciation and taxes and insurance, to do so materially, I would say would bring the difference down to maybe 8 or 9¢.

1087 Q. So you would still be higher then?

A. Slightly higher. Eliminated was one thing—before we go further on the payroll, I didn't make a comment at the time, but they say the payroll—they adjusted it from the Dunkirk Plant upward for anticipated cost differential. This is the plant in the Far South and here is an industry in New York State, and they are adjusting labor rates upward in a move to the south, which is contrary to the industrial picture. We notice throughout the country plants are locating in the south because of more favorable labor rates. I couldn't understand that, and there is no other explanation. Now, eliminated from your Projection No. 1—you furnish me three items; one, sales expense, one on travel expense, and one on interests. Now, I computed what the cost would be on the per fours 1000-page units for these three items. I finally came out to \$6.41, whereas our total was \$6.19. So \$.22 is in our favor on that kind of a basis. But I'll put that in there for the record only. We have no comparable figure to compare with sales expense. We have travel expenses, going to meetings, and so forth, but we have no comparable sales expense.

1088 Q. Going back, Mr. Smith, to what you call the labor costs in the projection, do you presently know what the

labor rate is in Sylacauga, Alabama for a color comic supplement pressman?

A. No, there is no contract on file for Sylacauga that I can ascertain.

Q. Now, based upon your experience, do you know whether there is any method or means of estimating the wage scale for such a pressman in Sylacauga?

A. I think a simple way of doing it would be to see what the differential between the color pressmen and the newspaper pressmen is, like in the City of Buffalo and Dunkirk where you have two contracts, take Dunkirk where you can get a comparison.

The COURT: Are there available sufficient skilled men in this art in Alabama or is it necessary to import them? Is there a good market for skilled pressmen, native to Alabama, do you know? I got the impression possibly that these people have in mind bringing some folks from this area and possibly paying them a premium. Give me your opinion?

1089 The WITNESS: We can go back to when we started up our plant at Newport News in 1948. We found there was not a pool of available help that would readily move. We trained our own pressmen in our own plant, outside of the few we have been able to hire since. We have trained more than half of the men. We have taken the regular newspaper pressmen and trained them in colorwork.

The COURT: You don't know there is a pool in Alabama now available? I certainly don't.

The WITNESS: Well, there is probably pressmen available, union pressmen that can be gotten. The union signs a contract with the company and has the responsibility to help them get labor. We insist that is what our unions do. If we need extra help in the press room we tell the president of the union we want journeymen, here is the situation, and so forth, and they write to the International Office. We 1090 have got colored pressmen that way too. We have a responsibility to live up to the hours and wages and the overtime; they have a responsibility to furnish us with help. We insist they do it.

By Mr. FELDMAN:

Q. I asked you, I believe, Mr. Smith, whether you knew any methods or means of estimating what the wage scale would be in Sylacauga, Alabama, for color comic supplement

pressmen, and I believe you were telling me the means you would use to ascertain what the wage would be?

A. I think you could do it right here in this city. You could do it in Newport News between the two plants there. You would have the labor contracts on file here. That would show you the difference between the labor rates. It would be a—a fair and equitable way would be to take the premium pay and apply that to the highest prevailing wage in Alabama so you would be getting a comparable figure to use as a probable starting place for the journeymen at Sylacauga.

1091 Q. Do you know whether there is any such figure available which you could use as the basis in order to make such an estimate or projection?

A. Yes, sir, there are figures available like this through our public services; also they are available in the United States Department of Labor.

Q. Now, pursuant to my request did I turn over to you a copy of the union wages and hours, printing industry, from July 1, 1961, and trends from 1907 to 1961, which is Bulletin No. 1315 of the United States Department of Labor, and also a sheet attached thereto indicating the union scales and wages and hours in the printing trade of Birmingham, Alabama, from July 1, 1961 and July 1, 1962?

A. You showed to me, yes.

Q. What, if anything, did you do thereafter?

A. Well, I took the report, studied it, and found out it listed these wage scales in here. They list the wage scale there, and it is in agreement with Buffalo. For Buffalo, here under rate per hour, day work, pressmen, \$3.519 per hour; that is about \$3.52. For Birmingham—the rate in Birmingham is listed in here as—the wage rate is \$3.293 per hour, pressmen, day work.

1092 Q. Now, with those figures, what did you do, sir?

A. You furnished me with a figure too for the effect on the contract for the Buffalo-Dunkirk area for labor pressmen?

Q. Yes.

A. And I ascertained the Buffalo rate or the Dunkirk rate would be \$4.064 per hour. The Buffalo newspaper rate, as shown in this book, is \$3.834; and the extra premium rate

for color pressmen in Buffalo is 23 cents difference. Now, in Birmingham the rate was \$3.293, so I would add the 23 cents to that to get the premium rate. That would give you a rate, estimated, for Alabama for color pressmen, \$3.523. Now, if I was negotiating I would check that against our figures in Newport News and find that the 23-cent differential between the color pressmen and the regular pressmen, would be 1.186, which is very close to the figure up here and on the percentage basis probably right in line with it, because our rate is 3.493, which is less than they pay up here, and the regular pressmen, 3.087 per hour, which is less than they pay here. The difference is .186. I have written it on the sheet. Now, I went a step further and I subtracted from this color pressman rate in the Buffalo area the estimated rate for color pressmen in Alabama. It came out to a difference of .541 or 54 cents an hour. That was a rate 13.3 percent less than the New York rate. I would think the projection payroll of \$249,326.00 that they have listed in here, which includes 42 cents per 1000 markup, which I am at a loss to know the details of, they add ten percent to that for employees benefits, \$24,932.00, giving a total of direct and indirect labor costs of \$274,258.00. From that I took 13.3 percent and ascertained a resulting figure of \$36,476.00. Now, that indicated the extent of a probable overloading of the labor costs in Projection 1, which, if correct on its face, would reduce the estimated loss in Exhibit A by \$36,000.00.

Q. Now in regard to power listed in Exhibit A, did you question that, sir?

A. I wanted to find out the background on the power. It stated that the power expense had been estimated on the basis of the 1961 experience at the Lufkin plant in Texas. Power costs for Projection No. 1 had been estimated to be incurred at a rate somewhat higher than Projection No. 2 due to more frequent starting load factors at less than full capacity, so I would ascertain maybe we would be in the classification of more frequent starting, since we have four times as many runs. So I decided to take our figures in Newport News and project them into Sylacauga to see what rate we would pay in Alabama, if we had been located in Alabama during this ten month period.

Q. And what, if anything, did you do?

A. I obtained the rates in effect in Alabama and took our power consumption and applied it against our actual use of power to ascertain the difference between the two. I have here in my hand the certification from the Federal Power Commission of the rates on file for Sylacauga, Alabama, and they are—

they have all the rates listed in here in this chart.
1095 Q. Now just for the record, Mr. Smith, where did you get those rates?

A. I obtained those from you.

Q. I gave them to you?

A. Yes, and the other one is a certification of power load factors for Virginia, and the Virginia Electric Power Company serves our area. Now we receive power from the plant that makes power out of coal; it is not water power, like I presume Alabama is, so I took our power consumption for each month there and compared it with what would have been charged in Sylacauga had we been using the same power in Sylacauga. I found there was a difference of \$51.48 for the nine months of this year, and this includes air conditioning and so on that we have in our plant. Heat offices by electricity, too, so the projection, I mean the projection figure in Exhibit A, I think of Projection 1 is somewhat high. I don't know what the power load is at Lufkin, Texas, but in Alabama it is not too much different than Virginia and we turned out almost as much. Our power load factor would be around six thousand; theirs is twelve thousand, so I would question that figure on power.

Mr. FELDMAN: At this time, I would like to offer in 1096 evidence certified copies from the United States Department of Labor of union wages and hours in the printing industry as of July 1, 1961, and attached to that, the union scales of wages and hours in the printing trade in Birmingham, Alabama, from July 1, 1961, and July 1, 1962. These are both certified copies here.

Mr. RAICHL: I have no objection.

The COURT: Received.

(Whereupon, Exhibit G-8 for identification, was received and marked in evidence.)

Mr. FELDMAN: At this time I would like to offer in evidence a certificate bearing thereto and mark as Exhibit A, the power rates for Sylacauga, Alabama, and it is certified by the Federal Power Commission.

Mr. RAICHLE: No objection.

The COURT: Received.

1097 (Whereupon, Exhibit G-9 for identification was received and marked in evidence.)

Mr. FELDMAN: At this time I would like to offer in evidence the National Electric Rate Book of the State of Virginia, and certified by the Federal Power Commission.

Mr. RAICHLE: No objection.

The COURT: Received.

(Whereupon, Exhibit G-10 for identification was received and marked in evidence.)

The COURT: Are there remarkable differences that he is going to comment on between Exhibit A and his estimate of what the costs should be?

Mr. FELDMAN: There might be one, slight one.

The COURT: Let's hit the one; let's not go over the ones he is not going to make a differential on.

By Mr. FELDMAN:

1098 Q. Directing your attention to Exhibit A as to the selling and administration costs, do you have any further comment to make other than what you have previously testified to?

A. No, I would—my comments, observation, is that those figures are on the face, I think, too high. I understand that the Judge—this court order of last June—was six contracts, would be put in that plant and in close proximity to Sylacauga, and I see no reason for \$10,000.00 of travel to hold that business, if that is what is going to be held there for the period of the order. The sales expense would involve not seeking out new business, and I question whether there would be \$15,000.00 looking for new business, if the plant could not add any more runs. Those two items are \$25,000.00. The interest charge of \$45,000.00 depends upon accounting practices, and the value of the property and so on, and they say that is for a loan that had been made and that is not an operating expense. It is an expense to be taken care of for tax purposes only, and comes out after you have ascertained your operating profit and it is a return on investment, and it is not, to my notion, to be considered
1099 as an item of production costs. We have no comparable figure at Newport News to load the cost factor with. Those are the items I would question.

Mr. RAICHLE: I object to the word "load". To "include" in the figures.

The COURT: Will you accept that?

The WITNESS: To what?

Mr. RAICHLE: You said to "load" the cost figures. I said "include" in the cost figures, not "load" them.

The COURT: Well, that is the term you use, meaning to include.

The WITNESS: I said we didn't have any comparable figure to load our cost figure with, and I stand on that.

The COURT: Now other than those comments, you have no criticism of the projection in Exhibit A.

The WITNESS: I question a few items through there.

The COURT: Of any consequence?

The WITNESS: Supplies and repairs. The total amount, dollar-wise, Your Honor, isn't concerned, of those operating things; all of them added together doesn't run up so much for 1100 thousand page units.

The COURT: Is that all?

Mr. FELDMAN: Well, all right, I will continue then.

By Mr. FELDMAN:

Q. Now Mr. Smith, going on, there has been some testimony here that Southern Color Print since April of 1961 has made a windfall or has been enriched through acquiring additional runs. Now will you tell us the manner that happened and what the circumstances were, as far as you know?

A. At that time, we had 24 runs in our plant. We lost one, and we will add on six more to make 29, the Norfolk run. So since that time, they have been increased by six runs. The amount of production in millions of units looks considerable but these runs happen to be larger runs. I noted—didn't mention it in this item here, but I noted that half of the Projection No. 1 is taken up by one contract. So you can put a run on your press that runs for six or seven shifts on the thing, why you can save some real money. Now we have gotten some larger runs recently, and we were able to get those larger runs because the tonnage—the weight of the shipments each week—was considerable, and by shipping two weeks at one time we were able to get a lower trucking rate than you get by shipping week after week. So we have a warehouse big enough to hold the two runs at one time so, in Charleston, West

Virginia, we were able to get the trucker to give us a better rate for that shipment twice a month and Beckman, West Virginia, within 75 miles, was able to share that rate, so that truck had that full load for that shipment. In the case of Greensboro, the newspaper has two runs. We have runs in Carolina that this trucker runs through Greensboro and he was glad to have that additional tonnage to take with him. He goes through Greenville, and Ashville and Charlotte, and that gave that man a better rate. We gained that work on the basis of saveable transportation charges. By adding the shipping price and the costs together give us the contract in the case at Macon, Georgia, which we were able to obtain. One trucker who gave us his lowest rate happened to be the same rate for hauling from

1102 Wilkes-Barre to Macon. Now he charges the identical rate. We know that from the rate the publisher says that he had been paying, so there was no advantage to us on that. We got the new contracts on closer proximity to our plant than either Sylacauga or Wilkes-Barre. The Norfolk contracts is across the river from us, within a short haul, and the people in Norfolk decided they would like to haul it themselves, so the transportation charge is their figure and they figure they can handle it themselves for less than it was hauled before by a truck from Wilkes-Barre. So that is the reason for the Norfolk contract. Now those newspaper printing contracts don't just hang around on trees waiting for somebody to pluck them off. These contracts are signed for one, two, three, maybe five years and they have a due date when they fall due and they must be cancelled by notice and in advance and so on, and not anybody can walk in the man's office and get it today. You got to work on it and bid on it and become more friendly and you get better operating procedure in your plant as we have been able to work up, so that the price then bid on it will land these contracts. We think our price was fairly close but

1103 with the shipment costs we came out ahead.

Q. Just to review a moment as to the actual geography involved, did you have a competitive advantage as to all these accounts, just as to the actual physical distance involved?

A. We had advantage on the shipping costs.

Q. As to all of them?

A. That's right, except for Macon, Georgia, which is probably closer to Sylacauga than we are. Well, it is.

Q. In other words, as to five of them, as to the distance you have an advantage as between your place and Sylacauga, is that right?

A. That's right.

Q. But this one run in Macon, Georgia, if Sylacauga commences operations, will have a geographical advantage, is that right?

A. That is right, some other of our runs would be affected by their being closer to Sylacauga than they are to Newport News. We are shipping beyond Sylacauga into the south, so those contracts are important to us as much as any new contracts, but we have found that the further away from Newport News, if our distance is further than the man is from Wilkes-Barre, we don't have much chance on him. This business of truck-

1104 ing is very important to it. It is so important that to save business, years ago we bought trailer-van trucks and we operate two of them now and deliver a lot of papers ourselves, right to the man's door, in order to hold contracts with service and delivery and we have various contracts for our trucks must be there within an hour of a certain time because of traffic conditions around the plant, and they are willing to, probably, pay us a premium for the shipping in order to cause less confusion in their hometown. One or two of them, that is the case. So we operate our own trucks for more than half of our deliveries and we have found that that is advantageous to us but, lately, we have been able to get some pretty good rates from one or two common carriers, specialty carriers who seem to want the business.

Q. You used the word "specialty carriers"?

A. When we first got in the business, the only rate was the posted scheduled rate which would hold, like shipping potatoes, machinery or something else. We ascertained and found out that there was an opportunity for a specialty—general cargo carriers to charge a different rate for hauling newspaper
1105 supplements, which would be magazine sections as well as comic sections, under the freedom of the press amendment to the Constitution, so we have now been able to get some of those same shippers to give us a lower rate. Some shippers who are specialty shippers, general cargo haulers, in the past have refused to quote us any rates but we have one or two now who are doing it.

Q. One more question: Since April, 1961, percentage wise, how has your volume of production increased?

A. The volume of production, around 40 percent.

Mr. RAICHLE: That doesn't include Norfolk.

The WITNESS: Well, it would be 50 percent with Norfolk,

yes.

By Mr. FELDMAN:

Q. In otherwords, by next March or April, it would be fifty percent?

A. It is not actually in the plant and you go by production of what is on the presses, so on. It is not in the plant; will be in March.

Mr. FELDMAN: I have no further questions.

The COURT: Recess until 2.

1106 (Whereupon at 1:00 O'Clock P.M. the noon recess was taken.)

1107 [Caption Omitted in Printing]

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

Defendants Greater Buffalo Press, Incorporated, International Color Printing Company and Dixie Color Printing Corporation moved to modify a preliminary injunction issued herein on June 22, 1962, upon the ground of changed circumstances and further that the provisions of such injunction do not permit the opening and the operation of the Sylacauga plant of the defendant Dixie Color Printing Corporation without sustaining substantial operating losses (this court having previously found that the opening of that plant is in the public interest), and upon the further ground that the preliminary injunction had made is possible for Southern Color Printing Corporation to obtain business without competition to the detriment of the moving parties. Upon the adjourned date of the motion counsel for the moving defendants, without objection upon the part of plaintiff, broadened the motion to include a motion to vacate in its entirety the preliminary injunction upon the same ground more fully supported by evidence developed in the course of depositions taken in support of the motion. Upon the basis of all the proceedings heretofore had herein, including the affidavits, exhibits and testimony which were made a part of the record on plaintiff's original application for a preliminary injunction and the affidavits, exhibits

and testimony which were made a part of the record in connection with the moving defendants' application to vacate or modify the preliminary injunction, the court makes the following supplementary and additional findings of fact and conclusions of law which shall be deemed to supersede the findings of fact and conclusions of law filed on June 22, 1962, insofar as these findings of fact and conclusions of law are inconsistent therewith.

FINDINGS OF FACT

1. The operation of the preliminary injunction has had consequences and effects wholly unintended and unforeseen by the court at the time it was granted. Among other things, it has prevented the opening of the Sylacauga plant, created an unfair competitive advantage for Southern Color Printing Company and has caused and will continue to cause damage to the business of International Color Printing Company.
2. The provisions of the preliminary injunction do not permit the opening and operation of the Sylacauga plant except under conditions that would result in certain and substantial operating losses.
3. The public interest requires that the Sylacauga plant be permitted to open and operate under conditions that will afford an opportunity for it to be operated in open and fair competition in the business of printing color comic supplements in the southeastern area of the United States.
4. The unrestricted operation of the Sylacauga plant by Greater Buffalo Press, Incorporated or its subsidiary Dixie Color Printing Corporation will not cause damage or injury to Southern Color Printing Corporation or Atlantic Features and Printing Company and the continuance of the preliminary injunction is not necessary for the protection of either of these companies or for the maintenance of effective competition in the color comic supplement industry in the southeastern portion of the United States.
5. The unrestricted operation of the Sylacauga plant by Greater Buffalo Press, Incorporated or its subsidiary Dixie Color Printing Corporation will not cause damage or injury to International Color Printing Company and will not diminish its independent ability to operate effectively, efficiently and profitably in the event this court should ultimately decree a

total or partial divestiture of the interest of Greater Buffalo Press, Incorporated in said company.

6. The operation of the restraining order and the preliminary injunction has resulted in a competitive advantage to Southern Color Printing Corporation and Atlantic Features and Printing Company which they have utilized to deprive International Color Printing Company of substantial amounts of business. The continuance of the preliminary injunction without

modification and the competitive advantage thus
1110 afforded Southern Color Printing Corporation and Atlantic Features and Printing Company will cause irreparable damage to International Color Printing Company.

7. The operation of the restraining order and the preliminary injunction has restricted competition in the sale and printing of color comic supplements in the southeastern part of the United States and has deprived newspaper publishers of the benefits of such competition, including substantial savings in transportation costs.

8. The restraining order and the preliminary injunction have not had the effect of maintaining the competitive status quo but have created a competitive advantage for Southern Color Printing Corporation and Atlantic Features and Printing Company and have prevented not only Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation but also King Features Syndicate Division of the Hearst Corporation and Newspaper Enterprise Association, Inc. from competing effectively for the sale and printing of color comic supplements in the southeastern part of the United States.

9. The provisions of the preliminary injunction preserving the integrity of the physical assets of International Color Printing Company and the independence of its personnel must be

retained for the protection of International in the event
1111 divestiture is granted.

CONCLUSIONS OF LAW

1. The changed circumstances found to have occurred since the entry of the preliminary injunction and the unintended and unforeseen result of the operation of such injunction indicate that the broad scope of preliminary relief heretofore granted is not required to prevent irreparable injury to the plaintiff in the event that this court should ultimately decree a divestiture of

the interest of Greater Buffalo Press, Incorporated in International Color Printing Company.

2. A balancing of the interests on the one hand, of the damage and injury found to have resulted from the present operation of the preliminary injunction to the public, the moving parties and to competition within the industry and on the other hand, of the lack of damage which would be occasioned to the plaintiff and the competitors of the moving parties by the modification of the temporary injunction, moves this court in the exercise of its discretion to dissolve in part its preliminary injunction.

3. The continuance of the preliminary injunction, insofar as it affects the personnel and physical assets of International Color Printing Company, is necessary to prevent irreparable damage to the plaintiff in the event this court should ultimately decree divestiture of the interest of Greater Buffalo Press, Incorporated in International Color Printing Company.

IT IS ACCORDINGLY ORDERED that the order of this court dated June 22, 1962, be modified as follows:

(1) Paragraph 1, page 2, is amended to read as follows:

"1. Further consolidating or intermingling any of its physical assets or operating personnel, with those of the defendants, Greater Buffalo Press, Incorporated, Southwest Color Printing Corporation or Dixie Color Printing Corporation, or any other person;"

(2) Paragraph 2, page 2, is amended to read as follows:

"2. Conveying, selling, leasing or transferring in any manner, printing presses, machines, equipment and parts thereof, or any other physical assets of, or in the possession of, or any stock of, the defendant, International Color Printing Company, to the said defendants, or any of them, or to any other person;"

(3) By deleting subparagraphs (d), (e), (f), and (j) of paragraph 4, pages 7 through 10 and 11.

John O. Henderson

JOHN O. HENDERSON

United States District Judge.

Dated: February 19, 1963.

1113 [Caption omitted in printing]

SIRS:

PLEASE TAKE NOTICE that at the trial of this action the plaintiff will move the Court to amend the complaint in

this action, for the purpose of simplifying the issues for trial, by deleting that part of such complaint which charges the defendant Greater Buffalo Press, Incorporated with having monopolized the trade and commerce described therein in violation of Section 2 of the Sherman Act.

Plaintiff will move to delete the following language from the complaint:

1. Page 10, paragraph 24—"and the defendant Greater Buffalo, since about June 1955, has monopolized"

2. Page 13, paragraph 30(d)—"The defendant Greater Buffalo has obtained a monopoly of the printing of color comic supplements in the United States".

3. Page 13, paragraph 1—"and that the defendant Greater Buffalo has monopolized".

4. Page 14, paragraph 5—"and the monopolization of the aforesaid interstate trade."

PLEASE TAKE FURTHER NOTICE that such amendment of the complaint, to be proposed by the plaintiff, will not delete such allegations of the complaint which charge the defendants, Greater Buffalo Press, Incorporated, The Hearst Corporation, and Newspaper Enterprise Association, Inc., with having entered into a conspiracy to monopolize in violation of Section 2 of the Sherman Act.

DATED: November 17, 1964, Washington, D.C.

Elliott H. Feldman

ELLIOTT H. FELDMAN

Attorney for Plaintiff.

TO:

RAICHLER, MOORE, BANNING & WEISS, Esquires,
10 Lafayette Square, Buffalo 3, New York.

1114 BAKER, HOSTETLER & PATTERSON, Esquires,
1956 Union Commerce Building,
Cleveland, 14 Ohio.

GALLOP, GOULD & CLIMENKO, Esquires,
360 Lexington Avenue,
New York City, N.Y.

1115 (Caption omitted in printing)

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;
2. The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the consenting defendant and filing said notice with the Court;
3. In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings.

Dated: June 16, 1965

For the Plaintiff:

UNITED STATES OF AMERICA

(S) WILLIAM H. ORRICK, Jr.,
Assistant Attorney General

(S) Lewis Bernstein,
LEWIS BERNSTEIN

(S) William D. Kilgore, Jr.,
WILLIAM D. KILGORE, Jr.

(S) JOHN T. CURTIN,
U.S. Attorney

(S) Elliott H. Feldman
ELLIOTT H. FELDMAN,
Attorneys, Department of Justice.

For the Defendant:

THE HEARST CORPORATION

(S) Herbert Brownell
HERBERT BROWNELL

(S) Jesse Climenko
JESSE CLIMENKO

1117

[Caption Omitted in Printing]

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys that:

1. The stipulation entered into on June 16, 1965 is hereby modified to provide that the Final Judgment, in the form attached thereto, may be filed and entered by the Court at any time after July 28, 1965 instead of the time provided in paragraph 1 of the June 16, 1965 stipulation.

2. All other terms and provisions of the June 16, 1965 stipulation remain unchanged..

Dated: July 15, 1965

Washington, D.C.

ELLIOTT H. FELDMAN,

Attorney for Plaintiff.

GALLOP, CLIMENKO & GOULD,

By JESSE CLIMENKO

LORD, DAY & LORD,

By HERBERT BROWNELL,

Attorneys for The Hearst Corporation.

Filed Jul. 21, 1965.

Roland E. Logel, Clerk.

1118 [Caption Omitted in Printing]

STIPULATION

It is hereby stipulated by and between the attorneys for all of the parties to this action that a Final Judgment, a copy of which is annexed hereto, was submitted to the Court for entry on August 16, 1965, upon notice to the attorneys for all of the parties to this action and all of such parties were afforded an opportunity to be heard thereon, with respect to the entry of such Final Judgment.

Dated: August 16, 1965.

For the Plaintiff:

UNITED STATES OF AMERICA

By Lewis Bernstein

LEWIS BERNSTEIN

Attorney, Department of Justice.

1119 For the Defendant:

THE HEARST CORPORATION

GALLOP, GOULD & CLIMENKO

By JESSE CLIMENKO

LORD, DAY AND LORD

By HERBERT BROWNELL

For the Defendant:

NEWSPAPER ENTERPRISE ASSOCIATION, INC.
BAKER, HOSTETLER & PATTERSON
By BOURNE P. DEMPSEY

For the Defendants:

GREATER BUFFALO PRESS, INCORPORATED;
INTERNATIONAL COLOR PRINTING COMPANY;
SOUTHWEST COLOR PRINTING CORPORATION;
and DIXIE COLOR PRINTING CORPORATION
RAICHLER, MOORE, BANNING AND WEISS
By JAMES O. MOORE, Jr.

1120

[Caption Omitted in Printing]

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 6, 1961, the defendant, The Hearst Corporation, having appeared and filed its answer to the complaint denying the substantive allegations thereof, and the plaintiff and said defendant, by their respective attorneys, having consented to the entry of this Final Judgment before the taking of any testimony and without trial or adjudication on any issue of fact or law herein, and without any admission by or estoppel of either party as to any such issue; and this Court having determined that there is no just reason for delay in entering a Final Judgment, except as otherwise provided herein as to all of plaintiff's claims asserted in said complaint against the said defendant; it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Hearst" shall mean the defendant The Hearst Corporation with its principal place of business at New York City, New York, and as used herein shall include King;

(B) "King" shall mean the King Features Syndicate Division of Hearst, with its principal place of business at New York City, New York;

(C) "Consenting defendant" shall mean the defendant Hearst;

(D) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(E) "Color comic supplements" shall mean supplements for inclusion in Sunday or Saturday newspapers, printed in color, and usually containing, among other things, copyrighted comic features; and

(F) "Features" shall mean material, whether copyrighted or not, including but not limited to comic strips, which appear in newspaper color supplements.

III

(A) The provisions of this Final Judgment applicable to the consenting defendant shall apply also to its officers, directors, servants, employees, agents, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) The consenting defendant is ordered and directed to take such steps as are necessary to secure compliance by its officials and such other persons, described above, with the terms of this Final Judgment.

IV

The consenting defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, or claiming any right under any contract, agreement, arrangement, understanding or plan with any person engaged in the printing,

distribution or sale of color comic supplements for the purpose or with the effect of:

(1) Hindering, restricting, limiting or preventing any person from engaging in the business of printing color comic supplements;

(2) Hindering, restricting, limiting or preventing any person from selling color comic supplements;

(3) Allocating or dividing customers, territories or markets for the printing or sale of color comic supplements;

(4) Fixing, determining or maintaining prices or any other terms or conditions for the sale of color comic supplements to any third person.

(B) Entering into any license for any individual feature or grouping of features, or fixing a fee charged therefor, or discounting from, or giving rebate upon, such fee, on the condition, agreement or understanding that the licensee shall not purchase color comic supplements from a printer other than one selected, designated or represented by the consenting defendant; provided, however, that combining a fee for the license and a price for printing shall not be deemed to be a violation of this subsection (B), but shall be subject to subsection (C) following;

(C) Entering into or renewing, adhering to, maintaining or claiming any right under any arrangement with any newspaper, for the sale of color comic supplements which include any feature licensed by such consenting defendant, unless
 1123 such arrangement is reduced to writing and (a) separately provides for or lists the fee for licensing such feature and the price for the printing of the supplements, and (b) provides that such license may at the option of the newspaper remain in effect at the same price for at least three (3) months following the expiration of the contract for the sale of the supplements. Provided, however, that this subsection (C) shall become effective only if, as and when a plant for printing purposes may have been divested pursuant to a Final Judgment entered in this action.

V

(A) Upon entry of this Final Judgment the plaintiff shall be permitted to use such discovery procedures with respect to the consenting defendant as it is entitled to use under Rules 26 through 37 of the Federal Rules of Civil Procedure as to the non-consenting defendants.

(B) Notwithstanding the making and entry of this Final Judgment the plaintiff may, if the Court adjudicates that the defendant Greater Buffalo Press has violated any of the anti-trust laws as charged in the complaint filed herein, seek and the Court may order such other relief as to the consenting defendant as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities that may be found by the Court and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements; provided, however, that the plaintiff in said application for such further relief does not seek an adjudication that the consenting defendant has violated any of the antitrust laws as charged in the said complaint. On any hearing with respect to such other relief the consenting defendant shall have the right to be heard on any issues relevant to a fair judicial inquiry.

(C) The plaintiff will not seek any divestiture relief in this action in the event a Final Judgment may have been entered in its favor, unless it has given notice of such application to the consenting defendant and all other parties to this action, and has afforded them the opportunity to be heard by the Court.

1124

VI

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the consenting defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the consenting defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be necessary for determining or securing compliance with this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any employee of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: August 31, 1965.

(S) JOHN O. HENDERSON,
United States District Judge.

1125

[Caption Omitted in Printing]

Trial of above entitled action held before the Hon. JOHN O. HENDERSON, United States District Judge for the Western District of New York, commencing on Tuesday, October 12, 1965, at 10 A.M., at Buffalo, New York.

Appearances: *Lewis Bernstein, Esq.* and *Elliott H. Feldman, Esq.* Department of Justice, Antitrust Division, appearing on behalf of the Plaintiff.

Messrs. Raichle, Moore, Banning & Weiss, by *Frank G. Raichle, Esq.* and *James O. Moore, Jr., Esq.*, Appearing on behalf of the defendant *Greater Buffalo Press*.

Messrs. Baker, Hostetler & Patterson, by *Richard F. Stevens, Esq.*, and *Bourne P. Dempsey, Esq.*, appearing on

behalf of the defendant *Newspaper Enterprise Association, Inc.*

1126 (Government's Exhibits P-1 through 69 marked for identification prior to trial.)

The COURT: Gentlemen. Mr. Bernstein?

Mr. BERNSTEIN: The plaintiff is ready, Your Honor.

Mr. RAICHLE: Ready.

Mr. STEVENS: Ready.

The COURT: I have not had time to explore with you the order of proof that you expect, except I know that a number of exhibits have been marked. I would like to know whether we are going to take any live testimony today or not?

Mr. BERNSTEIN: We expect to take one witness today. My best estimate would be no more than a half hour and I expect to do that relatively soon in the proceeding. Perhaps we may reach it before the morning break, or, if not, the first thing after the recess.

The COURT: Then what is the order of proof you expect to make?

Mr. BERNSTEIN: May it please the Court: I would like to present a statement of the facts that the Govern-
1127 ment proposes to prove in the order in which it will be proved, and submit to Your Honor an outline of the topical proof that the Government will offer. Then at the conclusion of this statement, if it meets with the Court's approval, the Government will introduce into evidence various documents and portions of a deposition, and then produce this one witness to identify the business records practice of certain documents we were not able to get stipulated, and continue on in that fashion.

The COURT: All right.

Mr. BERNSTEIN: The plaintiff will prove that in or about January 1954, Greater Buffalo and King were competitors for the sale of printed color comic supplements; that in or about that time the two of them agreed to eliminate competition of
1128 two newspaper accounts, consisting of three newspapers, and then a short time later agreed to eliminate competition between them by respecting each others existing competitors. In the meantime——

Mr. RAICHLE: Did you mean competitors or customers?

Mr. BERNSTEIN: Respecting each others respective customers. In the meantime, both King and Greater Buffalo were potential competitors for newspaper accounts in the South and Southwest. Each, independently, were proceeding with a plan to establish a printing plant in the South. Greater Buffalo was giving serious consideration to establishing a plant in Lufkin, Texas; and King was giving serious consideration to have International establish a plant in Sylacauga, Alabama.

At or about this time, having agreed to respect each others customers, then Greater Buffalo and King agreed to eliminate all competition between them, under an arrangement whereby King would be the sole sales agent for the comic supplements and Greater Buffalo would concentrate on the printing only of the colored comic supplements and also as part of this arrangement was to do the printing of the supplements sold by King that theretofore had been done by International by acquiring the stock of International.

So, in accordance with this arrangement, on June 25, 1955, Greater Buffalo purchased International with King's approval and without which the sale might have been impeded. In or about November, a few months after this acquisition; without King's knowledge—although Greater Buffalo and King had the understanding that King would be the sole and exclusive sales agent for Greater Buffalo printing—without King's knowledge, Greater Buffalo brought NEA into the picture and made an arrangement whereby NEA would also be sales agent for color comic supplements printed by Greater Buffalo.

1130 and it made this deal with NEA whereby NEA, which at that time was having its color comic supplements printed by its own subsidiary, Buffalo Color Press, it made arrangements to acquire the printing facilities of Buffalo Color Press and do the printing for NEA, and thereby signed a contract with them whereby it eliminated competition with NEA for the printing of the color comic supplements by agreeing in a written contract that for those customers that NEA was then printing and selling color comic supplements to, Greater Buffalo would do the printing and would give NEA perpetually a royalty on those accounts. It also agreed with NEA, insofar as any new business was concerned—by "new business" they meant a newspaper which did its own printing, printed its own

color comic supplements, and then decided to have an outside printer then do it—that with respect to any new business
 1131 printed by Greater Buffalo, NEA was to get a commission on all new business it brought in and they agreed they were going to arrange to allocate which customers were to be whose; whose were to be NEA's, whose were to be Greater Buffalo's.

Now, King had no knowledge of this at the initiation of this arrangement, but it soon found out about it, found out about it by an invitation of the president of Greater Buffalo to King to meet with NEA representatives in a hotel in New York City, and there at that meeting, King and NEA agreed that the two of them would not compete against each other for the sale of color comic supplements.

These are the Government's contentions with respect to this conduct that I have just outlined to the Court. The Government contends that at the time that Greater Buffalo
 1132 made its arrangement with NEA to buy Buffalo Color Press and do the printing for NEA, the Government contends Greater Buffalo and King at that point of time had already been engaged in a conspiracy to refrain from soliciting each other's business and to maintain and stabilize prices, which was in violation of Section 1 of the Sherman Act.

The Government contends that NEA joined this conspiracy by its deal with Greater Buffalo and later with King, because at that time it had such information that would charge it with knowledge that King and Greater Buffalo was then engaged in a conspiracy to refrain from competing with each other and to maintain and stabilize prices. Now, the Government contends these are the facts; that NEA knew—which the Government charges it with knowledge—King and Greater Buffalo
 1133 must have been engaged in a conspiracy at that time. It knew Greater Buffalo planned to proceed with its Lufkin Plant; it knew Greater Buffalo couldn't proceed with the Lufkin Plant without an assured volume of business down there. It had heard that King and Greater Buffalo had a deal. It knew Greater Buffalo couldn't buy International out and become King's exclusive printer at International without King's acquiescence. The Government contends that knowing these things, it must have known that King and Greater Buffalo had a no-compete arrangement at the time it made its deal with

King not to compete with it for any supplements, color comic supplements.

Greater Buffalo's acquisition of International increased its share of the market for printing for newspapers which didn't print its own color comic supplement from a minimum 1134 of thirty-one percent to sixty-three percent. The Government contends this acquisition, in and of itself, violated Section 7 of the Clayton Act; and since that acquisition was part of a conspiracy between King and Greater Buffalo, which had later been joined by NEA, at the same time it also constituted, among Greater Buffalo, NEA, and King, a conspiracy to monopolize for Greater Buffalo the printing of color comic supplements and the sale of printed color comic supplements through Greater Buffalo, NEA and King.

In its proof the Government will show that, as a consequence of this conspiracy, competition with another color comic printer, Eastern, had been eliminated; and further, that newspapers were misled into believing that competition actually existed between Greater Buffalo, King and NEA, whereas, this 1135 was in effect a sham upon them; actually there was no competition. They were led to believe by Greater Buffalo, King and NEA that there was competition.

That constitutes the Government's case, Your Honor. For the Court's convenience, I will hand up the Government's outline of proof, and listed there are eighteen topics, and the evidence that the Government will introduce and will fit under the category of these topics in this order.

If I may, at this time I will proceed to the proof on the first topic, which is proof to show that Greater Buffalo and King were competitors in the sale of color comic supplements to newspapers prior to their arrangement not to compete in 1954.

The COURT: What you have just said, Mr. Bernstein, is in the nature of an opening here, and it may be that the other parties would like to respond in an opening of some 1136 fashion. I invite them to do so. Of course, they are not compelled to. Is there any desire to do that now?

Mr. RAICHLE: I would like to make one or two observations, if Your Honor please. I had intended not to make an opening because I conceived that Your Honor was so familiar with this case as a result of the proceedings had and taken before you from time to time over the years during which it has been pending. But in view of counsel's opening, I feel called upon to make

these observations. Number one—and I think important—is the fact that his contentions as now made are not only at complete variance with the allegations of his Complaint, the theory of his case to date, they are in many instances in direct conflict with the allegations of the Complaint and the positions which counsel has taken from time to time before Your Honor.

1137 Be that as it may, it will develop and be apparent to Your Honor, I foresee, during the course of the trial. At the outset, I would like to call your attention to the fact, though it be an indulgence in the obvious—that this is not a case to impose a penalty for past wrongs; it is not a case to recover damages or inflict punishment upon the defendant; it is a case in equity, where the equitable powers of the Court are invoked to grant relief, dictated by the competitive situation or the business conditions or the circumstances presently prevailing.

Now, the talk about a flirtation in 1954, in 1955; ten, eleven, twelve years ago; initiated by the only predator so alleged to be in this case—King Features or Hearst—and the talk about alleged agreements in 1954, which the proof will show were never carried out, long since dissipated even as far as the
1138 negotiations concerning them are involved. It is not pertinent to what is to be decided by Your Honor, I submit.

Now, it will appear, of course, that King, which by the way had created this industry, if such it be, in which it had at one time a complete monopoly except for the printing of color comic supplements by newspapers themselves; King had the features, King tied, according to the original claims of the Government, the sale of features with the sale of printing, but, in any event, little Buffalo Press, from humble beginnings, due to the industry, the hard work and the dedication of its owners, began to eat into the King Features or the Hearst monopoly, and then in the course of events, the other defendant, NEA, Newspaper Enterprise Association, came along and there was additional competition for King. Of course, King didn't
1139 like this, and you will find running through the case the thread of a dominance by King, and there is a resentment of the ascendancy of Greater Buffalo and of the competition of NEA, and there will be, I frankly say, some documents and maybe some other proof that there were these maneuvers, largely fostered by the absent defendant, who has consented

himself out of the trial of this case, King I mean. But the proof will show there was competition before the flirtation, competition after it; that Greater Buffalo abjured by the law has competed, has competed effectively in certain instances with King and Hearst, and has competed effectively in certain instances with NEA, and that competition, rife, spirited, wholesome and effective has taken place over the years and is now taking place in this industry.

1140 The matter of some musings, introspective and retrospective thoughts on the part of Hearst representatives, I assume, are to be offered through the medium of these documents, to try to show that somewhere, somehow, there was some arrangement that bound these defendants which I think Your Honor will find never existed, was never honored. Above and beyond everything else; no one has been, no one is being, and in the foreseeable future no one will be injured by anything which the Government can prove.

Now, the events which he stresses—when I say “he,” I mean my learned adversary—are events that took place long ago; 1954 as he says; 1955, as he says; 1956 and 1957 some of the documents might tend to indicate. But the pertinent inquiry is, what is the prevailing set of circumstances now? What is there in the circumstances that calls for the drastic

1141 remedies which he seeks? Your Honor has found, after careful reflection upon a rather complete record, that this is an industry to which anyone has easy access; anyone without great means and without considerable know-how can enter. Those who choose to, can and may. Any newspaper can print its own comics, comic supplements. It is preposterous to claim, with all the capacity aggregated among the newspapers in this country to print these things themselves, that it could be thought that little Greater Buffalo could achieve a monopoly. Your Honor is well aware, I am sure, of the findings he has made in this regard. There will be, I venture to say, no proof of any attempt to monopolize. It would be preposterous to undertake to do so. Of importance like the straws that show the way the wind is blowing, is the fact that after our

1142 last pre-trial conference—or during the course of our pre-trial conference, more accurately stated—counsel withdrew the monopoly charge. For years he charged that we had monopolized. On what seemed to be the eve of trial, he amended his Complaint and withdrew the charge of monopoli-

zation. Before Your Honor, on the motion on our part to relax and, indeed, vacate the preliminary injunction, the song seemed to be that unless something was done in behalf of Hearst, some protection was accorded Hearst, Greater Buffalo was going to take some of Hearst's business away from them. Now, he says we had an agreement not to compete. At that time he was claiming that we were competing so effectively that we were taking the business away from them. He has shifted, he has changed, he has been inconsistent in all his claims, and today for the first time he comes forward with another theory
1143 of action.

I go to something else, Your Honor. I foresee some difficulty for Your Honor to resolve this. Counsel's case is purported to be made for the most part through the medium of documents. He talks about the business record rule; he talks about the shopbook rule; he talks about the declarations of co-conspirators and all those things with which Your Honor is generally familiar. But from my preparation of the case, I foresee a great difficulty. I would make some request, just as he does, the documents which have been marked and assigned by him as those upon which he relies, are apparently to be offered in no chronological sequence, if he follows the marking of the documents. A document comes in dated 1954, 1955; then one

comes in dated 1958 or 1959 and we are back again to
1144 1957, and it is a very hard case to follow, if indeed he follows—to use the word again—the order of proof, which is indicated by the number on the documents. But more importantly and of substance is the fact that most every document I have seen allegedly taken from the files of the absent defendant, Hearst, who has consented itself out of the trial—again I repeat, the only one charged with predatory practices—every document taken from the files of that defendant, which I have seen, which he purposes to offer, is a document which I conceive to be inadmissible under familiar rules of law.

In the first place, he relies, and indicates that he relies, upon the basic proposition that the declarations of one conspirator are binding upon others. That is only so after there is clear and independent proof of the fact of the conspiracy. We
1145 must not, during the course of this trial, lose sight of the fact that the declarations of a conspirator, an alleged conspirator, is admissible only if first there be independent, legal and competent evidence upon which a preliminary

finding of a conspiracy could be made. Secondly, that the statement, written or oral, is a statement made in the course of the conspiracy and to effect the objects thereof. But, in addition to that, as the Court said, the so-called shopbook rule, the so-called business record rule, means what it says, and that it does not extend to hearsay and gossip, and there must be the basic proof which brings it within the rule; and I am afraid, as these documents are offered one by one, we must argue and Your Honor must rule, in many instances and specifically with respect to each document, as to whether it comes within the rules.

We have tried to find in our minds a manner of whole-
 1146 sailing; it can't be done, Your Honor. The most shocking claims are made; that communications between employees of our competitors—as I choose to call them—should be binding upon us, and there is the problem with respect to each document as to whether it is admissible. I do say to Your Honor, in good faith, our objections are to be pressed. We cannot organize our side of the case until we know and have learned from Your Honor's rulings which of these documents are admissible and which are to be received, and which are not. I make the general claim, without fear of misrepresenting it, that this case must fail in large measure due to the inadmissibility of the documents which my friend seeks to offer in support of his case.

The COURT: Mr. Stevens?

Mr. STEVENS: If it please the Court; on behalf of Newspaper Enterprise Association, Incorporated, I adopt what Mr.
 1147 Raichle has said generally and wish to point out specifically, as to my client, the very outline of the alleged connection of NEA with the alleged conspiracy is tenuous to the inth degree. For example, Mr. Bernstein did not say that we, proof positive, knew of the existence of a conspiracy at the time we made a contract with Greater Buffalo Press and at the time Buffalo Color Press was sold to Greater Buffalo Press. He says that we must have known. Why? Because we were aware from what our representatives heard throughout the country that Greater Buffalo Press was contemplating a printing facility in Texas, and we must have deduced from that fact that there would have to be a very substantial volume of printing available in Texas and, of course, by the vassal association of one idea with another, which is characteristic in this case,

1148 I submit, somehow we were to have believed and to have known that there was not merely a business association, but a conspiracy to fix prices, to allocate markets, existing between Hearst, which was by far the largest percentage factor in color comic supplement business, and Greater Buffalo Press, which was, I believe, second to it, and we, NEA, had four to five or possibly six percent of the entire business. The second, and the startling fact pattern from which we were supposed to have deduced there had to be not a normal business relationship but a conspiracy, which if the gentlemen on the opposition were correct, was the basis or properly the basis of a criminal charge, that that existed because Greater Buffalo Press bought International Color Company in Wilkes-Barre,

and because it was known in the business that International printed for Hearst. Again, we were supposed to have added up these series of items and come to the conclusion that there must be an unlawful arrangement between Greater Buffalo Press and Hearst, and that we'd better get into the tent so that we can share in it. I respectfully submit, on the very face of the statement of counsel, there is, as I have said, only the most tenuous case portrayed against NEA.

Now, Your Honor, the proof—I don't wish to go into it extensively; like Mr. Raichle, I thought we might defer it until a resumption of the defense for such a statement—the proof will show that this heinous event we were supposed to have committed when we sold Buffalo Color Press, which was a subsidiary of NEA, to Greater Buffalo Press, arose in a fact pattern in which Buffalo Color Press was losing money, 1150 losing money substantially, and I believe the facts will show that we had an analysis made that it would have taken an expenditure of something like one million dollars to have put the ancient equipment in use at Buffalo Color Press on a basis anything like competitive with Greater Buffalo Press. Furthermore, Your Honor, there was talk about the fact that there was a reserve commission. The truth of the matter is, Your Honor, that on the accounts which Greater Buffalo acquired at the time the sale was made in October of 1955, of Buffalo Color Press to Greater Buffalo Press, those accounts had been served and serviced by NEA, and they continued to be served and serviced by NEA. This isn't a gratuity, it is a quid pro quo, for work done. The people who contacted the

customer, as I understand it, are NEA people and it is a continuing service which they render. Now like Mr. Raichle,
 1151 I draw the Court's attention to the fact that this is an equity case and we are today considering what relief is in the scope of the power of this Court, in its discretion, to grant the Government, assuming it can develop facts which warrant the granting of any relief.

The proof, Your Honor, will show that, in order to clarify the record, any notion that there was a restraint upon NEA personally from openly going after Color comic supplement business whenever and wherever it was available in 1958—which is now seven full years ago, and a year and a half at least, I believe, prior to the institution of this proceeding—NEA, through its sales manager, vice-president in charge of Sales, sent a bulletin to all of its salesmen stating that they should go after color comic supplement printing business wherever and whenever it could be found. So that when we come to consider
 1152 the position of NEA in this proceeding we find there is only the thinnest possible threat of connection, by Mr. Bernstein's own words, not a direct charge, but things which he can deduce and believe the Court should add up to a finding of guilt, to place us in a conspiracy. We will find there were the broadest and most substantial business reasons for the disposition of Buffalo Color Press to Greater Buffalo Press at the time it was sold because of its losing position and because of the tremendous expenditure it would have taken to put it into a competitive position. We will find that, although there was talk, as a small factor in this business, and naturally NEA wanted to find out what the big boy, King, was doing, and wanted to forestall its efforts—and the documents will be replete if they are admitted, which to me is questionable.

1153 will be replete with notions that the head of the King Feature comic color supplement business wanted to exterminate any position of NEA in this business. When we show that we have actually and overtly instructed our salesmen to desist from any notion there was to be any limitation upon competition and actively undertake to sell wherever and whenever they can, we respectfully submit that NEA should be discharged from this proceeding.

On the subject of the evidence, I subscribe heartily to what Mr. Raichle has said. The Government has indicated to us that there are some twenty-nine documents, Your Honor, which it

hopes to submit and have accepted under the business record statute, which I think Your Honor is familiar with. Out of those documents, no less than nineteen are from the files of King Features. Many of them are merely the introspec-
 1154 tive musings of a man who wrote memoranda to himself before he attended a meeting and then compounded the felony by duplicating the effort afterwards, apparently for his sole consumption. Others are purely in the category of inter-office memoranda.

The COURT: Who is that man you mentioned?

Mr. STEVENS: Frank J. Nicht, who has passed away since this proceeding was instituted. I cite the King documents, which are offered, I expect will be offered, under the shopbook rule, because they are to me glaring examples of misapplication and improper invocation of that statute, and we certainly will have to address ourselves, I respectfully submit, to each document as they come up.

The COURT: What do you consider Nicht's musings to be; a diary that he kept in his business records, or what?

Mr. STEVENS: I think, your honor, they were state-
 1155 ments to himself, as he tried to ingest and digest what he thought he heard and saw, and to prognosticate from them. They are highly introspective. They indicate that he was literally thinking out loud to himself. One of the documents, for example, ends in a series of questions, not quite like the nothingness of what, but something similar.

The COURT: All right. Is there anything further?

Mr. RAICHLE: No.

Mr. STEVENS: No.

The COURT: One thing that I have been given, I think yesterday, is a memorandum on this business record rule and concerning expected documents, and which gave me an indication there was going to be a tussle over these records, and now it is confirmed by Mr. Raichle's statements and Mr. Stevens. I don't know whether you have had a copy of that?

Mr. BERNSTEIN: No.

Mr. MOORE: I have got one here.

The COURT: This is going to be a crucial part and we
 1156 want to do the best we can to be sound. I have certain views on it, particularly if the proof bears out what you say about these musings in somebody else's files. I would like to have the Government's position when you make these offers,

legally back them up. One of the leading cases that counsel talked to me about is Standard Oil against Moore, 251 Fed. 2nd, 188, and they cite the Central Railroad against Sotnik, 258 Fed. 2nd, 85. Now, I assume that you might well imagine that you are going to have trouble over this question and are ready to face up to it now. I don't think it comes as a surprise, does it?

Mr. BERNSTEIN: It does not come as a surprise that objection was made to the introduction. We did not receive a copy of the memorandum.

The COURT: I wanted you to be in shape.

Mr. RAICHLE: It wasn't prepared until late yesterday, it cites two cases.

1157 The COURT: I wanted to be sure that there wasn't any feeling that had prevailed that these things were going to come swimming on in.

Mr. BERNSTEIN: Not on my part, Your Honor.

Mr. RAICHLE: May the record show we have given him a copy of the memorandum. I think we should have given it to you yesterday. I am sorry.

Mr. BERNSTEIN: Now, if the Court please, the Government has arranged its proof topically, rather than chronologically, and with all due respect to counsel, there is some order in our presentation. And the Court might be interested in knowing that we have given defense counsel a cross index of the Government exhibits for identification with the document numbers that had been used in the pre-trial preparation of this case, so that in general, they have the order of proof of the documents and the cross index to it. The first item relates to Topic
1158 1, to show that Greater Buffalo Press and King Features were competitors in the sale of color comic supplements to newspapers prior to their arrangement not to compete in 1954. It has been stipulated between the parties in a stipulation dated September 24, 1965, in paragraph 7-----

Mr. STEVENS: Just a moment, please? Seven?

Mr. BERNSTEIN: Prior to June 1955, Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King and NEA, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. I now offer in evidence from the deposition of the Hearst Corporation, by Frank J. Nicht, a Director of the Hearst Corporation, and Vice-President and General Sales Manager of the

King Features Syndicate Division of the Hearst Corporation, taken by the plaintiff pursuant to notice, dated at 1159 Buffalo, New York, March 3, 1961, at the Federal Court-house, Room 609, Foley Square, New York 7. New York, on March 20, 1961, at 10:30 a.m., before Albert R. Sparks, a Certified Shorthand Reporter and Notary Public of the State of New York. Frank J. Nicht, the deponent, is now deceased; he died in 1964. I offer in evidence at page 26, the following portions—

Mr. RAICHLE: Page 26?

Mr. BERNSTEIN: Line 12, during the direct examination of Mr. Nicht:

"Q. Going back to 1954, which of the companies listed by you did you consider to be your leading or keenest competitors?

"A. Greater Buffalo.

"Q. Going down the line as far as competition was concerned, who would follow?

"A. NEA."

Then going to—

Mr. RAICHLE: Read the rest of it.

Mr. BERNSTEIN: Not at this time unless—

1160 Mr. RAICHLE: I submit, if Your Honor please, with an apology for interrupting counsel, this is an excellent example of this practice of wresting a question and answer out of context without reading that which directly relates to it.

The COURT: Now, I will require you, Mr. Bernstein, to read the full answer that has any bearing on the comments made, or if you choose not to, give counsel the privilege of interrupting, as he has, to read it now. I am not going to be hopping back and forth through a multitude of things here. I don't want to have to be looking at a brief that says "when Mr. Bernstein read that on opening day, two days later there was another portion read that has a mellowing affect on it." Let us be practical and either you read it—you may not be presently aware of what Mr. Raichle wants read—but if he asks you to read on, then I wish you would do so or I will give him the privilege of 1161 doing so.

Mr. BERNSTEIN: I will be happy to if he will indicate which portion.

Mr. RAICHLE: Just the rest of the page.

The COURT: You read on and if that point is reached and you are happy with it—

Mr. RAICHE: Just the rest of the page.

"Q. After NEA?

"A. I mentioned those before—Chicago Tribune, United Features, Eastern Color. That is about it.

"Q. When you mention the Chicago Tribune, in other words in 1954 you considered the Chicago Tribune to be a competitor of King Features?

"A. Yes, sir."

Mr. RAICHE: That does it.

Mr. BERNSTEIN: Now, I might state at this time, so that there is no misunderstanding amongst us, the Government is not trying to take any unfair advantage—

The COURT: I don't have any such idea.

Mr. BERNSTEIN: The Government is trying to focus its attention on these topics. Quite true, the answers during
1162 a deposition, when we are trying to develop a point, you take many avenues which are—which may not develop.

The COURT: I haven't any impression that you are giving us less than what you consider the pertinent facts are; except, if counsel feels particularly in these depositions, there is a pertinent fact inadvertently overlooked by you, I want it there now, not two days from now.

Mr. BERNSTEIN: Very well, Your Honor. Page 8, the same deposition, line 9—

Mr. STEVENS: Just a moment, please.

Mr. BERNSTEIN:

"Q. What business, Mr. Nicht, is the King Features Syndicate engaged in?

"A. It's engaged in what is known as newspaper syndication. We produce and sell comics, columns, and miscellaneous features for newspaper publication.

"Q. When you say you produce comics and columns,
1163 do you refer to the actual printing of paper, or are you referring to the subject matter or so-called features?

"A. Subject matter.

"Q. In regard to the actual print, or newspaper itself, does the King Features Syndicate sell such supplements?

"A. Yes, sir.

"Q. You used a little while back the word 'syndicated.' What, generally, does the word 'syndicate' mean in your business?

"A. It means just what it does in our instance. We produce and sell features for newspaper publication.

"Q. You mentioned a moment ago, I believe, that the King Features Syndicate sells color comic supplements. Is that correct, sir?"

"A. That's right, sir."

I propose to skip to page 120.

Mr. RAICHLE: Again, we would like the rest of that page.

Mr. BERNSTEIN:

"Q. Is there any other newspaper syndicate, to your knowledge, which also engages in the sale of color comic supplements?"

1164 "A. Yes, sir.

"Q. What syndicate is that, sir?"

"A. You mean syndicate or company?"

"Q. I am referring to syndicate now.

"A. NEA, Newspaper Enterprise Association.

"Q. Are there any other syndicates which come to your mind?"

"A. United Features, I believe.

"Q. Any others which come to your mind?"

"A. Chicago Tribune News Syndicate.

"Q. Any others?"

"A. I can't think of them."

I now go to page 10, line 12——

Mr. STEVENS: I think if you are going to read that, you ought to read this intervening portion because it has to do with relative size.

Mr. BERNSTEIN: Line 2:

"A. I don't know. Are you referring just to the ones you have mentioned?"

"Q. That is right, sir.

"A. Including King?"

"Q. Including King.

"A. I would say King had the greatest.

1165 "Q. Would you have any idea who would follow King?"

"A. NEA.

"Q. Who would follow NEA?"

"A. Either Chicago Tribune or United Features.

"Q. In referring to the fact that King Features Syndicate sells color comic supplements, does King Features actually do the printing or does it purchase such color comic supplements from color printers?"

"A. We make arrangements with color printers.

"Q. After making such arrangements, does King Features Syndicate contract or make arrangements to sell such supplements to newspapers?

"A. Yes, sir."

I now propose to skip to page 23—strike it out. I will discontinue reading from the deposition at this time and now proceed to Topic No. 2, which is evidence designed and offered for the purpose of establishing that International Color Printing printed exclusively for King and, unlike Greater Buffalo, 1166 did not contract with newspapers for the sale of color comic supplements it printed. It has been—

The COURT: This is before the acquisition, you mean?

Mr. BERNSTEIN: That is correct.

The COURT: The acquisition by Greater Buffalo?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: It has been stipulated in a stipulation dated September 24, 1965, at paragraph 2: "Prior to June 1955, International was a printer of color comic supplements and maintained a printing plant at Wilkes-Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois, until some time after June 1955." Paragraph 3: "International, from 1927 to June 1955, printed color comic supplements exclusively for King." Now, with respect to Government's Exhibit 1, marked for identification—Exhibit P-1—

The COURT: Just jog my memory; what is your contention with respect to the ownership of the stock of International 1167 prior to the purchase by Greater Buffalo; who controlled it, in your theory?

Mr. BERNSTEIN: Prior to its acquisition by Greater Buffalo Press the stock was owned almost entirely by individual members of a family known as the Govine family, G-o-v-i-n-e.

The COURT: It is not your contention that King controlled that stock at any point?

Mr. BERNSTEIN: No, Your Honor. It is the Government's contention that International printed exclusively for King.

The COURT: I know that. When you made your opening I got the impression one of your present arguments was that one set of people were going to print by arrangement; another was going to sell—

Mr. BERNSTEIN: That is correct.

The COURT: By arrangement, illegal arrangement?

Mr. BERNSTEIN: That is correct.

The COURT: I wondered—I couldn't remember—how King was supposed to be controlling International whereby International got in the hands of Greater Buffalo.

1168 Mr. BERNSTEIN: The Government's contention is, and the evidence will develop, that King had such an arrangement with International, even though it didn't own the stock, that International was pretty much beholden to King; King could, if it wished, by contractual arrangement and business arrangements, control the course of International's existence.

The COURT: I wondered if they had direct, positive control —

Mr. BERNSTEIN: They did not.

The COURT: If it were true, what you contend, they could snap their fingers and get that in the hands of the printer and leave them the sales. I have it now.

Mr. BERNSTEIN: Now, with respect to Government's Exhibit P-1 marked for identification, Your Honor, and Exhibit P-2 for identification and Exhibit P-3 for identification, Exhibit P-4 for identification —

1169 Mr. RAICHLE: Are you skipping P-3?

Mr. BERNSTEIN: No, sir.

Mr. RAICHLE: I beg your pardon.

Mr. BERNSTEIN: Exhibit P-5 for identification, and Exhibit P-6 for identification, constitute contracts—Exhibits P-2 through P-6 constitute contracts between, or purport to be contracts between King Features and International Color Printing. Exhibit P-1 is a letter dated May 14, 1956, which is after the date when International Color Printing Company stock was acquired by Greater Buffalo; a letter prepared by International Color Printing, signed by Joseph J. Gorman, President and General Manager, addressed to Mr. Robert Wilkerson, Equitable Life Assurance Society, dated May 14, 1956. The Government offers all of these documents in evidence.

1170 Mr. RAICHLE: Could we be guided as to what you claim from the documents? I don't want to make any general or captious objections, but let me point out the difficulty we have in this, and, I think, Your Honor might have. Exhibit 3, for example, is dated October 21, 1932. The alleged conspiracy—I might say any one of the alleged conspiracies, because they seem to be different ones from time to time—

are claimed to have commenced in or about the year 1954 or 1955. Exhibit 6 is back in June of 1940. I don't want to fail to object to something that is relevant and material but incompetent; on the other hand, if there is some limited purpose, if it is offered for some purpose that is innocuous or proper, I don't see what he is trying to prove by these documents.

Mr. BERNSTEIN: Might I suggest, Your Honor, as an order of procedure, because necessarily antitrust cases are like putting a mosaic together, each part in and of itself is not 1171 of earth-shaking significance, but when the entire mosaic is pieced together, you see it. Might I suggest this as a procedure that will save time and yet preserve the defendant's rights to make timely objections. The Government proposes to read portions of these documents, which it considers significant, and I would suggest, Your Honor, the same rule as the Court had before, if the defendant wishes other portions of the document read, we will be glad that you do it. If the defendant is given the right after the portions are read, so that the Court has the opportunities to see the relevancy, and the defendants, themselves, rather than a speech by counsel as to what is claimed by this document, then the defendant would have the chance to object to its receipt in evidence or being stricken from evidence and it be given no weight.

The COURT: That seems practical, Mr. Raichle. It could be if this thing gets as close as it might be on the admissi- 1172 bility, I would want to reserve decision and ponder those things. We have a record here. If I decide that you prevail, if you are right, we will strike it and not consider it in evidence.

Mr. RAICHLE: That is the old story of the hot poker, when the man objects, they take it away.

The COURT: You haven't a jury here. I think I can manage to listen to these things. I am going to read them anyway to see whether they are proper, relevant and material here, and I think I have reached the point where I may be able to read the record and make a decision based on competent evidence. We will follow that procedure. In other words, you are making an offer of proof here, basically, and there is going to be an objection to the offer. I may rule on it immediately; I may reserve decision.

Mr. RAICHLE: Then he isn't offering the whole doc- 1173 ument, he is only offering the part he is going to read.

The COURT: No. He said in the interest of continuity and justice, if you have an addition you wish read, he would read them. You are offering the whole document in evidence?

Mr. BERNSTEIN: That is correct.

The COURT: You are stressing parts?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLER: He puts the burden on us to point out our objection to the whole document.

The COURT: The whole document is offered in evidence. He is going to read parts of it, I take it. If you wish to have the parts that you think are essential to you read, he will read that balance. The whole thing is in evidence, offered in evidence.

Mr. RAICHLER: Then we would be required to make any objection that we would feel must be made to parts of the document other than those which he reads. That put a terrific burden on us.

1174 The COURT: That is always a problem. That was your intention?

Mr. BERNSTEIN: Yes.

The COURT: Offer it all?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: We may have to limp along. I appreciate you have the right to examine these, to make decisions on whether you are going to object to them. I am going to give you all the time you need to do that. I may have to take some time myself before I pass on these that are going to be disputed vigorously.

Mr. RAICHLER: We are trying to be as liberal as the rights of our clients would permit. We are not going to make captious objections. But it would help if he said, "I offer this to show there was competition, to show there wasn't competition," it might be on an entirely different phase of the case, for instance, some statistic.

The COURT: That suggestion would be helpful. You 1175 combed these documents out of many, many, I am sure, and you have a purpose; so why don't you say you are offering it specifically toward a certain line or generally toward a certain line?

Mr. BERNSTEIN: Well, the difficulty with that, Your Honor, is that some of these documents, in order to make the case intelligible to the Court and make the record clear and not get bogged up in a morass of detail, in order to see where we are going, some of these documents are going to be offered at this

time for one purpose, and later on under another topic and paragraph would be offered for another purpose. Might I suggest, Your Honor, and I think the defendant's rights have to be preserved, the Government will stipulate there is a standing objection to competency with respect to each document on the part of the defendants, so that its rights are preserved.

1176 The Government offers all of these documents that it is offering in evidence as an offer of proof in the event they are rejected so that the material is before the Court in any event, and the Government will state the basis upon which it considers this document competent. It considers this document competent on the grounds that at the time it was written, the President, Joseph J. Gorman, President of International Color Printing Company, was the President of a corporation, the sole stock ownership of which was under the control of the defendant, Greater Buffalo Press, and therefore is offered as an admission as against the defendant, Greater Buffalo Press.

Mr. RAICHLE: Admission of what, for instance? If the Court please, if he would say, "I offer it to prove there was competition," or "offer it to prove there wasn't," or "I offer it to

1177 prove there was an agreement," that is one thing. But to put in several documents, twenty or thirty years apart, some of them long before the alleged conspiracy is claimed to have taken place, with statistical information—for instance, let me use the first document which, by the way, is the document to which I have no serious objection, but I think it will illustrate a point. This is an application for a loan, apparently, made by International Color Printing after it had become a subsidiary of Greater Buffalo. Now then, is it offered to show that International Color Printing was seeking to, at that time, finance the building of the Sylacauga, Alabama, Plant; is it offered to show that it either did or did not need the financial standing of Greater Buffalo Press to accomplish it, or is it offered to show some historical fact which is recited to the bank, and which counsel might later claim as

1178 some significance; some historical fact related to a time there was no conspiracy; or is it offered to show some statistic which might appear in the document? If so, what is the claimed significance of them? Is it offered to show a list of the customers serviced at that time so they may be contrasted with some other time? What is the basic purpose of the offer of proof? I think I am entitled to know that.

The COURT: All right.

Mr. BERNSTEIN: I'll cut the time short by responding directly to counsel's question. It is offered to prove Topic 2; that International Color Printing printed exclusively for King, and unlike Greater Buffalo, did not contract with newspapers for the sale of color comic supplements. Exhibit P-2 through P-6, which goes back in history, shows the contractual arrangement between King Features and International prior to that.

Exhibit P-1 is being offered at this time for the first two paragraphs—the last two paragraphs on the first page, and the third paragraph on page 2, in order to make the Exhibits P-2 through P-6 intelligible, to summarize them and give a comprehension of what the businessmen did; to facilitate this trial, to simplify the presentation; and I submit again, Your Honor, we will save a considerable amount of time with respect to the documents if the Government is permitted to read the portions which it is going to rely on, that it considers significant, at that time offering the entire document in evidence subject to the defendant's rights to strike or read other portions.

The COURT: There has been an offer. I want to hear objections. Do you object to it?

Mr. STEVENS: Yes, I object to it. I have an additional reason—

Mr. RAICHLE: I object to it.

Mr. STEVENS: I have an additional reason, and I believe I am accurate, that this sequence of documents must have been identified—if they had been identified at all—in an examination by counsel for the Government of Mr. Gorman in connection with the motion for a preliminary injunction. That was not a proceeding to which NEA was a party.

Mr. BERNSTEIN: May I—

Mr. STEVENS: If I may finish. And we have stated to the Government that we have no objection to their using copies, nor do we contest the documents came from the file of whatever source they designate, but these are not matters as to which NEA has had a right, any right of inquiry. There will be others of that same kind.

The COURT: I have both objections now, have I?

Mr. RAICHLE: I must say that I am completely confused.

Please don't think I'm trying to persist in the argument:

I am trying to clarify my thinking. The Government
 1181 always makes the claim in this class of case that time
 is saved if the documents are taken. Of course, time
 is saved, but that isn't the be-all and end-all. We are en-
 titled to have him make his case by legal and competent
 evidence. We shouldn't have to have documents taken by
 the wholesale and then the burden put on us at a later time to
 come out to move to strike all the portions and foresee his
 claims when writing a brief, as to the significance of portions
 not called to our attention now.

The COURT: Now, I have these objections.

Mr. RAICHLE: I have no objection to No. 1 if it's offered
 for the purpose he said it was.

The COURT: I am going to receive these generally, objec-
 tion overruled.

Mr. RAICHLE: Exception.

The COURT: You may read what portions you wish, con-
 sistent with our policy, that if there is something more
 apparently to do with it, it will be all read at the
 1182 request of counsel.

Mr. BERNSTEIN: Am I clear; may the record show
 that P-1 through P-6 are now received?

The COURT: Received in toto. You can read the portion
 you wish to now.

(Thereupon, Government's Exhibits P-1 through P-6,
 previously marked for identification, were received and
 marked in evidence.)

Mr. BERNSTEIN: At this time the Government proposes
 to read only from Exhibit P-1 in evidence.

Mr. RAICHLE: One other objection; there is no basis of
 proof of the competence of Mr. Gorman or the authority of
 Mr. Gorman to make, in behalf of any of the defendants
 here, particularly Greater Buffalo Press and International
 Color Printing Company, anything in the nature of an ad-
 mission, if it is later claimed to be such, against the interest
 of either defendant, and a historical recitation of the
 1183 life of International Color Printing from the year
 1922 to date. There is no proof of the accuracy of the
 letter, there is no proof of the—

The COURT: That is another point. I assume that it was conceded these letters did exist, were created, and were in the file; that part I thought you agreed to stipulate.

Mr. BERNSTEIN: I thought there was a further agreement the documents were authentic.

The COURT: If not, I'm in trouble. I assumed that had been accomplished.

Mr. RAICHLE: I haven't made myself clear. If Your Honor please, this first document is a letter, and it gets to the second paragraph and the gentleman writing the letter starts out, "It was incorporated in 1922," and then it purports, apparently, to give a history of the operation of the company long before Greater Buffalo acquired the stock of the

company; and to protect myself, I don't know what subsequent claims are going to be made about it, I

don't know whether it's accurate or not, I assume it was intended to be accurate, it does come from our file or the original did; I am not talking about authenticity in that regard, I am talking about the authority of an officer of International Color to make historical statements that would be in any way binding upon Greater Buffalo.

The COURT: I understand what you mean. You don't know whether Gorman is accurate in what he said. But what he said is accurate on paper and part of the file?

Mr. RAICHLE: That I don't claim.

The COURT: Overruled.

Mr. BERNSTEIN: The first paragraph—excuse me—the salutation: "Dear Sir: I am writing this letter in response to your request that we give you a background of International Color Printing, Co. Company was incorporated in 1922 for the purpose of printing a Sunday Newspaper in Wilkes-Barre, Pa. In 1924 idea of printing comic supplements for other newspapers was conceived. First order was from King Features Syndicate—300,000 four page sections weekly." I now skip to the next-to-last paragraph: "Company signed a contract with King Features in 1925 to print all of the Syndicate's comic supplements. Later on, because of the distance to Pacific Coast, contract was amended to read 'at least seventy-five percent' of all printing sold by Syndicate. Original contract, and renewals, were in effect from 1924 to June 1955, when we signed a new contract which will carry us to 1965,

with option for renewal. By that time we will have been printing King's work for a period of over forty-one years." I interrupt the reading to invite the Court's attention to the fact that Exhibit P-2 and P-6 are the documents, the con-
 1186 tracts that Mr. Gorman appears to have summarized in this paragraph. I continue reading with the last paragraph: "What is King Features Syndicate? It is by far the largest newspaper syndicate in the world. It owns —"

Mr. RAICHLER: The last paragraph?

Mr. BERNSTEIN: Last paragraph of the first page: "It owns rights to comic and editorial features, which it sells to newspapers in every country outside the Iron Curtain. Syndicate has had tremendous growth and International Color has grown with it. Starting with the one single width Hoe Press, with a total capacity of a little more than one million sections weekly, we have grown until we now have the following press equipment—" and I do not read the itemization on page 2, and I skip down to the third full paragraph on page 2, the last sentence: "Greater Buffalo differs from International in a
 1187 number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers."

Mr. RAICHLER: Do you mind, there you are starting in the middle of a paragraph. I think you should read the full paragraph.

The COURT: Comply with that.

Mr. BERNSTEIN: Paragraph 3 reads as follows:

"Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company produces over 63,000,000 four page sections weekly. No other printing company produces more than 6,000,000 weekly, and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the supplements now produced by International. Greater Buffalo differs from International in a number of respects,
 1188 but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers."

Mr. RAICHLE: I think it should be stipulated that the insurance company would not grant the loan, is that right?

Mr. BERNSTEIN: I have no knowledge of that, Your Honor. I am not going to stipulate as to that. If the defendant wishes any stipulation, they can present that to the plaintiff as the plaintiff has done to the defendant, and in the normal course, we will handle that when we come to the defendant's part of the case. I know nothing about it.

Mr. RAICHLE: Are you stating, as an officer of the Court, you don't know that?

Mr. BERNSTEIN: I am stating, as an officer of the Court, I have no knowledge with respect to that loan.

1189 Mr. MOORE: The document in your file doesn't show that?

Mr. BERNSTEIN: I don't make that representation. I have not combed over, personally, the thousands of documents in the file. If the defendant wishes to stipulate, I respectfully submit it should be submitted to counsel so that it could be examined, and it can be studied and hashed over, as has been done heretofore.

Mr. MOORE: Why don't you make that inquiry of Mr. Feldman?

The COURT: You have an invitation to a stipulation, if it can be worked out. We have got to move along.

Mr. BERNSTEIN: The Government proceeds to Topic No. 3, namely, that Greater Buffalo and International were competitors in the printing of color comic supplements in 1954. The Government now offers in evidence a portion of the testimony of William J. Hammond, in the proceedings held before
1190 this Court on October 25, 1961, in which the appearances were noted, as appearing in behalf of the Defendant Greater Buffalo Press, the firm of Raichle, Moore, Banning & Weiss; appearing in behalf of the Hearst Corporation, Lord, Day & Lord; on behalf of Newspaper Enterprise Association, Inc., Baker, Hostetler & Patterson, by Richard F. Stevens, and the Department of Justice attorneys—

Mr. STEVENS: If it please the Court; I would like to state that we object to the testimony, to the reading of any testimony from Mr. Hammond's transcript for the reason that the examination made—

Mr. BERNSTEIN: May I interrupt, I can save time; this is only offered against the Defendant Greater Buffalo.

The COURT: Is that satisfactory?

Mr. STEVENS: That is perfect.

Mr. RAICHLE: I like the the expression, affecting the Defendant.

1191 Mr. BERNSTEIN: In favor of the Defendant, Greater Buffalo, Your Honor. At page 184, Mr. Hammond is identified as being at that time Treasurer of Greater Buffalo, having been employed by Greater Buffalo since 1930, associated on a full-time basis since 1945. On page 247, at line 2, Mr. Hammond was asked this question——

Mr. RAICHLE: Just a second, please.

Mr. BERNSTEIN:

"Q. Who do you regard as your competitors in this business? Referring now to the year 1954, who did you regard in 1954 as your competitors in the color comic supplement printing industry?

"A. In the sale of them, Mr. Carlson, or in the production of them?

"Q. Let's take them separately. Who are your competitors in the production?

"A. In production?

"Q. Yes.

"A. Well, all the plants that were in existence; Eastern Color, Star Color, Southern Colorprint, World Color, Acme. I think that about covers it.

1192 "Q. Any others?

"A. No, not that I can think of.

"Q. Did International Color print any color comic supplements in 1954?

"A. In the production?

"Q. In the production.

"A. Yes, that is right, International Color."

Mr. RAICHLE: You are going on, aren't you? Continue please?

Mr. BERNSTEIN:

"Q. Who were your competitors in 1954 in the sale of color comic supplements?

"A. Mainly King Features Syndicate.

"Q. Any others?

"A. NEA.

"Q. Do you know whether any of the other competitors in the production that you have named have salesmen?"

"A. I am not aware of it."

The COURT: Are you going to another matter?

Mr. BERNSTEIN: On the same topic I now offer——

The COURT: We will take a short recess.

1193 (Thereupon, the court was in recess at 11:30 a.m.)

(Proceedings resumed, pursuant to recess, commencing at 11:45 a.m.)

The COURT: Yes.

Mr. BERNSTEIN: With respect to Government's Exhibit P-9 for identification, it purports to be a letter dated September 14, 1954, prepared by Joseph J. Gorman, addressed to Local #137, Printing Pressmen and Assistants Union——

Mr. STEVENS: Was that Exhibit 9?

Mr. BERNSTEIN: P-9.

Mr. STEVENS: Do you have 7 and 8 there? You haven't mentioned them.

Mr. BERNSTEIN: 7 and 8 will not be offered at this time. If Your Honor please, Exhibit P-9 is a photocopy, and there is attached to it a typed copy which would make it easier to read. But the document that is stamped is the photocopy. The Government offers it for the first paragraph——

1194 Mr. STEVENS: If you will just wait until we have it, please.

Mr. BERNSTEIN: This is offered as against the Defendant Greater Buffalo.

Mr. STEVENS: Thank you.

Mr. BERNSTEIN: The first paragraph: "Gentlemen: When you met——"

The COURT: Excuse me.

Mr. RAICHLE: Wait a minute, you offer only the first paragraph?

Mr. BERNSTEIN: The entire document is being offered in evidence. The Government will read portions of it which it contends will demonstrate the relevancy at this time and then I, respectfully suggest that at that point the defendant can make objections to the document. Specifically, the Government will consent that every document offered has this standing objection.

Mr. RAICHLE: I don't want to try the case that way. I don't have to settle for that nonsense. I want to be heard on

1195 this, if the Court please. This is the first of the business record documents, so-called. There is nothing hallowed or sanctified or made proper by such a label. The letter, dated September 14, 1954, the year before the acquisition, it is a communication apparently between somebody presumably at International Color, indeed, Mr. Joseph J. Gorman and a Union committee called the Scale Committee. Mr. Gorman at the time was not our employee, had nothing to do with us, no motivation or authority to represent us in any way, shape or manner; and legally there has been no basis laid for the receipt in evidence of the document, except the fact it comes from the files of International Color Printing. It raises this question of whether the mere fact that it comes from the files of some business concern makes it competent against somebody else. There is

1196 no proof it was made in the ordinary course of business; much less, that it was the ordinary course of business to make such a record. There is no proof that the statements therein contained are true and correct. There is no basis for the statements made in the document or for the receipt of the statements made in the document concerning the competitive picture to which the document from time to time and from place to place relates. In short, none of the requirements for the receipt in evidence of the document have been even prima facie attempted to be complied with. All that counsel says is that he will read and from that Your Honor will see that it is in a measure admissible. I respectfully submit that when we get to the important aspects of this case, and we are on the threshold of it with this document, there should be legal, 1197 competent evidence as required by the authorities to establish the basis on which the document can be received.

Mr. BERNSTEIN: May I be heard, Your Honor?

The COURT: Yes.

Mr. BERNSTEIN: This document is not being offered under the business records rule. This document is being offered for the fact that on September 14, 1954, Mr. Gorman, as President, as an official of International Color Printing, made certain representations to a Union in the course of bargaining. The fact those representations were made, regardless of whether they are true or not, is something for the Court to weigh in the determining of their accuracy.

The COURT: Sustained. I do not accept that theory.

Mr. BERNSTEIN: Very well, Your Honor. The Government reserves the right, if it might, to call the author of the document at a later time.

The COURT: That is different.

Mr. BERNSTEIN: To offer the document. The Government offers in evidence the testimony from the proceedings of October 26, 1961, before this Court, the testimony of Robert Brader, as against or in favor of Greater Buffalo only. On page 279, line—

Mr. RAICHLE: Wait just a second. We don't have that. We are borrowing one.

Mr. BERNSTEIN: I propose to go to line 25 on that page:

"Q. For the record, will you state your name and address, sir?

"A. Robert Brader, 47 Kadow, Wilkes-Barre, Pennsylvania.

"Q. By whom are you employed, Mr. Brader?

"A. International Color Printing Company.

"Q. How long have you been employed by that company?

"A. Twenty-two years."

On line 16:

"Q. What has your position been with the International Color Printing Company?

"A. I have been employed in the Mailing Department.

"Q. Is that over the entire period of your employment?

1199 "A. Yes.

"Q. Are you a member of any Union?

"A. Yes.

"Q. What Union is that, Mr. Brader?

"A. Well, presently it is the International Mailers Union."

I then propose to continue reading at page 285, line 2:

"Q. Did Mr. Gorman describe Greater Buffalo as his chief competitor in the course of these discussions?"

Mr. RAICHLE: Excuse me, just a minute, I move to strike that out. I object to this. This is a witness testifying to something that Mr. Gorman is alleged to have said to him in 1948 and the year subsequent to 1954. That is before we had any connection with this International Color Printing of any kind or character. Mr. Gorman would have no authority in 1948 down to 1954 to make a statement that would be binding

1200 or admissible against Greater Buffalo.

Mr. BERNSTEIN: May I be heard?

The COURT: Yes.

Mr. BERNSTEIN: If the Court please, the Government's position is that in negotiations with the Labor Union concerning labor rights, necessarily the problem of competition and competitors are concerned. So that if the fact is that in the course of this negotiation the subject matter of the negotiation was who the competitors were, what the connection was, the Government submits this is relevant, this is something that can be considered by the Court, whether or not it accepts it and chooses to place reliance is another matter. This is competent for that reason, and another reason is that no objection was raised at the time this question was asked during the course of the proceedings.

The COURT: Those are always saved. You always
1201 save your objection for the time when you are going to consider them before the Court.

Mr. BERNSTEIN: Right, if the objection is one as to form. However, that is, I take it—counsel's objection is not as to form.

Mr. RAICHLE: I said it is basic, it is a hearsay statement by someone unconnected, entirely unconnected with us, in no position to bind us, in no position to affect us, with no authority from us to say anything concerning us.

The COURT: It gives me trouble what Mr. Raichle is saying. You could get a member of the Chamber of Commerce to analyze the situation that he thought prevailed; that should not be binding on the party here.

Mr. BERNSTEIN: It should not at all be binding, Your Honor, but this is a different situation. The Government is offering this not for the truth of the statement, but for the fact that the statement was made. For example, the
1202 question of whether—

The COURT: If that is your purpose, I sustain the objection.

Mr. BERNSTEIN: May I offer the document as an offer of proof, Your Honor?

The COURT: Yes, you may offer it. Now, when I say that I am sustaining the objection, I consider that ruling is correct, but if you and Mr. Feldman want to brief that for me on a particular point, and exchange that with counsel, I

will listen to further argument. To me, now, I have made the proper ruling. I don't mind you trying to persuade me again that I was wrong and there is a basis for it.

Mr. BERNSTEIN: Very well, Your Honor. Line 5:

"Q. Can you identify to the Court any specific occasions on which he so indicated in the period 1948 to 1954?"

Mr. RAICHEL: The same thing, the basis of the objection.

Mr. BERNSTEIN:

"Q. Take the first occasion that comes to your mind—

The COURT: Same ruling. Let me ask you, what difference does it make that somebody unconnected said something? You don't offer it for the proof of what was said, the truth of what was said; that he said something. I don't understand. I don't get what relevance this has.

Mr. BERNSTEIN: Perhaps I will—

The COURT: If you don't offer it for the truth of what was said—he might have said a hundred things that could be read in here. I don't get that.

Mr. BERNSTEIN: The difference is this, Your Honor; there are some circumstances that the mere fact that someone said something, regardless of whether it is true or not, is a fact to be considered. What were the circumstances under which—

The COURT: If he said it at a time when there was a relationship, I can see that.

Mr. BERNSTEIN: The Government's point is, Your Honor, that it has been stipulated that Joseph Gorman was the president of International from January 1, 1954, to January 1, 1961, and this document was written September 14, 1954, at the time when he was president of International. The Government claims that the Court can give consideration to the fact that the president of a color comic supplement printer, which has been identified as being in business, stated during the course of Union negotiations, when the principal concern is over what the competitor is paying for Union rates, and the argument that he uses is that he can't pay a certain rate because his competitor is doing something else. Whether or not that is true, whether he was competitor or not, is something for the Court to decide in connection to the weight to be given to it. This is an entirely different matter than if the president of the Chamber of Commerce in a

1205 conversation with somebody else said, "I consider Greater Buffalo a competitor," the circumstances under which this statement was made, the Government contends adds probative value to the fact that if in the course of negotiations the topic they considered was what competition was paying, then it is a relevant consideration for the Court and the Court may, if it wishes, conclude that they must have been competitors.

The COURT: Well, I will make the same ruling on it. I invite you to give me authorities that seem to be in line with your contention.

Mr. RAICHLE: Just by way of a pleasantry; the Union's claim to have obtained an exception to the antitrust laws; I didn't know they had any exception to the hearsay law.

The COURT: Well, I ruled on that. Again, I want to invite you, not necessarily that you have to take advantage of 1206 it, to consider that and give me any authorities you think might persuade me. I have made the ruling presently.

Mr. BERNSTEIN: In view of the Court's ruling, I offer, as an offer of proof, the answer:

"A. I remember the first time I was elected Chairman of the Union, that was back in 1947. I think 1948 was my first negotiating committee. It seems to stick in my mind because that was the first time that I was on the negotiating committee and I recall then, from that period, during that period of negotiations, that he mentioned those specific companies, particularly Greater Buffalo. Then again in 1950 we negotiated a contract and again it was the problem of competition. In fact, I have a letter to that effect although no names were mentioned in the letter, I know that he mentioned particular companies during the negotiations that were his competitors."

I then move to page 286—

The COURT: Who is this talking?

1207 Mr. BERNSTEIN: This is the Union official who is talking.

The COURT: Do you want to have some Union official say that he recalls what an International officer was alleged to have said about some period that expired long past, is that right?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: In the nature of things, it doesn't seem to me that is fair, but inherently unfair, if you want to analyze it that way. Go ahead.

Mr. RAICHLE: Your Honor has sustained the objection as to what he calls the offer of proof?

The COURT: That is to get his records, so that if I am wrong, he has something to work on.

Mr. BERNSTEIN: As a further offer of proof, page 286:

"Q. Did you discuss in the negotiations who the competitors were?"

"A. Yes.

"Q. One of these competitors was Greater Buffalo Press?"

1208 "A. Yes.

"Q. Moving a little closer down to date; in the negotiating sessions that just preceded the event of Greater Buffalo's acquisition of International, did any such discussion occur with Mr. Gorman?"

"A. Yes, I think it was our last contract before Buffalo bought International Color in 1954.

"Q. What did Mr. Gorman say at that meeting or those meetings?"

"A. I don't know. Like I say, specifically, Buffalo was our competitor.

"Q. By Buffalo, you mean Greater Buffalo?"

"A. Greater Buffalo.

"Q. You knew what he referred to when he said Buffalo?"

"A. Yes, Dunkirk."

Now, page 281, line 5:

"Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what——"

Mr. RAICHLE: This is a new thing?

Mr. BERNSTEIN: Same subject matter.

1209 Mr. RAICHLE: Same offer of proof?

Mr. BERNSTEIN: No, this is a question, page 281, line

5.

Mr. STEVENS: This is all only against Greater Buffalo?

Mr. BERNSTEIN: That is right.

The COURT: Is this a question asked of that same Union leader?

Mr. BERNSTEIN: Yes.

The Court: How does it differ; is this still an offer of proof? I have ruled on the subject matter.

Mr. BERNSTEIN: Still an offer of proof.

"Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what subjects were considered at Labor Union negotiations that you attended in your position as Chairman of the Labor Negotiating Committee?

"A. Well, when we negotiated contracts it was always fair wages and conditions and in the period of the discussion to negotiate the contracts, Mr. Gorman always brought out the problem of our higher manning compared to other 1210 plants.

"Q. Did he name the other plants in this period of time, this 1948 to 1954 period?

"A. Yes.

"Q. In the course of negotiations?

"A. He named—there was Wilmington, Buffalo, Dunkirk, Waterbury, Bridgeport and other color printing companies.

"Q. About how many of these negotiating sessions did you attend, directing your attention just to 1948 to 1954, if you can give us an approximation?

"A. Well, I would say at least—the least number would be two a year, each contract year. I think during that period we probably had about five contracts, so I would say in the neighborhood of at least fifteen meetings. I would say the minimum would be about fifteen meetings during that period.

"Q. You have described to the Court what companies were mentioned in connection with Mr. Gorman's statement?

"A. Yes.

"Q. Statements concerning competition, competitors in the industry, you have identified them by name. Did Mr. 1211 Gorman, in the course of those fifteen or so meetings, characterize any of there particulars?

"A. Yes, specifically I would say Dunkirk.

"Q. What do you mean by Dunkirk?

"A. That is the Buffalo, Greater Buffalo.

"Q. Greater Buffalo Press?

"A. That is the Dunkirk plant where they didn't employ mailers on the night shift."

I won't read the rest of it. I now turn to——

The COURT: What happened to Gorman, by the way?

Mr. BERNSTEIN: I believe Mr. Gorman is here in the courtroom. And in view of Your Honor's ruling, we may have to shift around and produce Mr. Gorman as a witness at this time.

Mr. RAICHLE: I think more important, the question Your Honor has in mind is did he stay with International after we acquired it; yes, he did and is there today.

The COURT: I was wondering if he was in the same category as Nicht, I hope not. He is still with us?

1212 Mr. BERNSTEIN: I am happy to say he is right here.

Mr. RAICHLE: He wasn't like Nicht while Nicht was alive and now he is totally different.

Mr. BERNSTEIN: If Your Honor please, at this point I was prepared to put on a witness. I haven't had an opportunity to discuss the testimony with the witness in view of the rulings. I wonder if we could adjourn at this time and resume a half an hour early, perhaps?

The COURT: Well, at 12:30 I am finishing up a hearing to suppress some evidence in a felony case. So if we are going to recess, we will have to do it until two.

Mr. BERNSTEIN: Yes, could we recess until two?

The COURT: It is a bite out of our time but if you are not ready we will recess now until two o'clock.

(Thereupon, the court was in recess at 12:00 noon.)

1213 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

The COURT: I understand Mr. Moore will be a moment late; we will wait for him.

Mr. RAICHLE: His son had a serious operation.

The COURT: You have a live witness now?

Mr. BERNSTEIN: Yes.

The COURT: Have the witness sworn.

Mr. RAICHLE: I think we can start. If I need a document not readily available, perhaps somebody else can give it to me.

The COURT: I don't want to be discourteous to Mr. Moore. I know he has a problem. We will swear the witness and wait for him.

MARGARET LUTZ, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The COURT: Mrs. Lutz, I want to wait for Mr. Moore to return.

Mr. BERNSTEIN: I wonder if we might use this time; 1214 we have a memorandum with respect to some points and authorities on the business records rule; may I present that to Your Honor?

Mr. RAICHLE: All right.

The COURT: Mr. Moore, I didn't know there had been any complications. I want you to have ample time to talk to anybody you want to over your problem in the family. Is there some time you need?

Mr. MOORE: No, Your Honor, I am all set.

The COURT: Has he had that operation?

Mr. MOORE: Yes.

The COURT: He seems to be all right?

Mr. MOORE: Thank you, sir.

The COURT: Don't hesitate to get to the phone for any purpose. We have that much time.

Mr. MOORE: Thank you, Judge.

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Mrs. Lutz, will you please identify yourself?

A. Yes, I am Margaret Lutz.

1215 Q. By whom are you employed, Mrs. Lutz?

A. King Features Syndicate.

Q. How long have you been so employed?

A. Twenty-two and one-half years.

Q. In what capacity are you presently employed?

A. Executive Secretary to Mr. Raymond K. Rogers.

Q. Will you please identify Mr. Rogers?

A. He is General Sales Manager.

Q. Of King Features Syndicate?

A. Yes.

Q. And prior to becoming Executive Secretary to Mr. Rogers, what were your duties with King Features Syndicate?

A. Executive Secretary to Frank J. Nicht.

Q. Did that continue up until his death?

A. Yes, sir.

Q. Prior to the time that you had been Executive Secretary to Mr. Frank J. Nicht, did you have any other duties with King Features in a secretarial capacity?

A. Yes, I was secretary to Jack R. Hornaday for a period of almost seven years.

Q. And following that period did you then become secretary to Mr. Nicht?

A. Yes, but not in an executive capacity, I was his second secretary, so-called.

Q. Would you please describe what the duties of the second secretary were, and the duties of the executive secretary, during the period of time when Mr. Nicht was alive and served as Sales Manager of King Features?

A. Well, let me say that I succeeded a Miss Jedlicka, who left the organization in 1954. I primarily took most of Mr. Nicht's dictation. Only highly confidential matters were dictated by Miss Jedlicka.

Q. Upon Miss Jedlicka's resignation——

A. I succeeded her as executive secretary.

Q. For how long a period, approximately, were you second secretary to Mr. Nicht?

A. Well, let me say that I was employed in Mr. Nicht's office directly for a period of approximately fifteen years.

Q. I show you Government's P-10 for identification, and ask if you are able to identify that document?

A. Yes, Mr. Nicht dictated this to me.

Q. And I invite your attention to the initials at the lower left-hand corner, "FJN:ML;" will you please describe what that indicates?

A. That the memorandum was dictated by Frank J. Nicht to me, Margaret Lutz.

1217 Q. What, if anything, can you tell us about the practice during that period of time when you were secretary to Mr. Nicht of placing the initials in the lower left corner?

A. I always placed my initials in the lower left-hand corner.

Q. On or about January 4, 1954, were you then the second secretary to Mr. Nicht?

A. Yes, sir. Miss Jedlicka left the organization in June of 1954.

Q. And what can you tell us, if anything, concerning the practice of receiving telephone—strike it out. What, if anything, was the practice with respect to incoming calls to Mr. Nicht at that time, or about January 4, 1954?

A. The same as any other time; when I received a telephone call from any particular individual I would leave my desk and announce to Mr. Nicht that so-and-so was on the line and wished to speak with him.

Q. And do you recall whether or not there were occasions during that period when Mr. Walter Koessler made such calls?

A. Could have been any individual.

Q. Do you recall any occasion when Mr. Koessler made such calls?

A. Yes, Mr. Koessler phoned Mr. Nicht occasionally.

Q. Were there any occasions when Mr. Nicht would dictate to you memoranda concerning telephone conversations during this period of January 4, 1954?

A. That was Mr. Nicht's practice.

Q. And tell us about that practice, please?

A. Well now, I just don't know how to answer that question.

Q. What was Mr. Nicht's practice with respect to dictation on or about January 4, 1954?

A. Well, I don't think the date is of primary importance.

Q. Well, was his practice pretty much the same throughout the entire period?

A. Yes.

Q. What was that practice?

A. Following any important telephone conversations, he would dictate memoranda to himself.

Mr. RAICHLE: I move to strike that out—"following any important telephone conversation"—how does she know whether it's important or not?

The COURT: I take it what you are saying is that when he chose to make a record of a telephone call, it was made?

The WITNESS: Yes.

The COURT: You considered it important; he did not do it in all instances?

The WITNESS: No, he did not do it in all instances.

By Mr. BERNSTEIN:

Q. Now, I invite your attention to the marking, Greater Buffalo Press, at the upper right-hand corner of that document. Do you recognize that handwriting?

A. No, I do not.

Q. Now, what was the practice with respect to filing documents in and about January 4, 1954, or at some other time, if there was a change?

A. We have our central files; but I would say that if Mr. Nicht had sent this particular memorandum to file, he would have so marked it "file" or "attach follow-up."

Q. What was the practice with respect to documents that did not have such markings?

A. They were retained in Mr. Nicht's desk.

Q. And do you recall whether there were occasions 1220 after—strike that out. Is it a fact, Mrs. Lutz, when an incoming call would come for Mr. Nicht, was it the practice that the incoming caller would not get Mr. Nicht directly but some other employee of King?

A. No, Miss Jedlicka or I answered the phone.

Q. Were there occasions when you answered the phone, and some caller was on the phone, you identified him to Mr. Nicht and thereafter he would dictate to you a memorandum concerning that conversation?

Mr. RAICHLE: I object to that, leading, suggestive. Your Honor. Let her tell what happened.

The COURT: True. This is an area that, if this is coming in at all, it must come in under care. So let her tell exactly—you may, if you wish, refresh her recollection if she doesn't recall this particular communication—but ask her if she knows the practice followed then of her own knowledge.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, was the practice followed then pretty 1221 much the same as the practice that was generally followed by Mr. Nicht up until the time of his death?

Mr. RAICHLE: I don't like to be repetitious but that is leading in character.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, what was Mr. Nicht's dictating practices during the period of time——

A. He was a very systematic individual. He was at his desk at 8:15 in the morning. He opened the mail, he passed some of it along to his assistants, he re-dated the so-called follow-ups and at nine a.m. he called in his second secretary and dictated for a period of approximately two hours each morning. From eleven to twelve he handled anything else which may have been on his agenda. He left for lunch, as a rule, at twelve, and returned at two, and again dictated to perhaps three or 3:30.

Q. What was the nature of the dictation?

A. The dictation could have been memoranda to himself, general correspondence, inquiries on features, quotations.

Q. You mentioned the word "follow-up;" would you please explain that?

1222 A. We call them follow-ups, you perhaps refer to them as files, in which we retained all that correspondence.

Q. Are you able to ascertain from looking at this document into what category of memoranda it goes?

A. Which document; the one I am holding?

Q. P-10, yes.

Mr. RAICHLE: If Your Honor please, it doesn't appear there are categories. He has not defined the term. I don't understand the question.

The COURT: Does that, by looking at it, mean to you a particular transaction or not, can you answer that?

The WITNESS: Well, it represents a quotation on a ready print run.

The COURT: I mean can you tell us from what source that memorandum emanated, how it came into being, by looking at it?

The WITNESS: It obviously follows the telephone conversation with Mr. Koessler.

Mr. RAICHLE: She deduces that from looking at it; that doesn't mean that is so.

The COURT: This lady says there was a practice of recording certain phone calls, at the selection of Mr. Nicht. She
1223 said that. Now, she has an exhibit for identification in her hands and has looked at it and again, what with respect to conversations over the telephone, does that mean to you? Can you tell us by looking at it that it refers to such?

The WITNESS: I'm sorry, I do not understand the question.

The COURT: All right.

By Mr. BERNSTEIN:

Q. You testified before, Mrs. Lutz, that it was Mr. Nicht's practice in dictating to dictate a certain category of items; what were those?

The COURT: The ones he selected; he called her when he wanted her for this purpose.

Mr. BERNSTEIN: That is correct.

By Mr. BERNSTEIN:

Q. In that connection you mentioned a memorandum to himself?

A. This is a memorandum to himself, yes.

Q. Is this the kind of document that you referred to
1224 as a memorandum to himself?

A. Yes, sir.

Q. Did the memoranda to himself take any particular form?

A. I can't answer that question.

Q. All right. One more question: are you able to state with regard to the frequency with which memoranda to himself were dictated by Mr. Nicht?

A. No, I couldn't state that.

Q. Are you able to tell us whether this was unusual?

A. I would say it was more usual than unusual.

Q. I invite your attention——

Mr. RAICHLE: By what standard is it more usual than not usual?

Mr. BERNSTEIN: If the Court please, Mr. Raichle can cross-examine——

The COURT: There has been no offer yet of this document.

Mr. RAICHLE: Okay, Your Honor, I am sorry.

By Mr. BERNSTEIN:

Q. I submit, Mrs. Lutz, Exhibit P-19 for identification, and ask you if you are able to identify that document?

A. No, this was transcribed by Miss Contorno.

1225 Q. How do you know that?

A. Her initials appear on the lower left-hand corner.

Q. What were her initials?

A. MEC.

Q. And at that time, June 23, 1955, what were her duties?

A. She was second secretary inasmuch as I had succeeded Miss Jedlicka as executive secretary.

Q. Do you know whether or not Miss Contorno's duties were the same as yours when you were second secretary?

A. Yes, they were.

Q. And looking at document P-19, what does that document mean to you as the kind of document it was?

Mr. RAICHLE: I object to that, "what does it mean to her."

The COURT: She can answer if she knows what it is.

The WITNESS: Just a memorandum again to Mr. Nicht following up a telephone conversation with Mr. Koessler.

Mr. RAICHLE: You see, if Your Honor please, if I might, she looks at the document and draws a conclusion. She did not prepare that, has no recollection of it independent of 1226 the document itself.

The COURT: She has testified to a regular routine office practice which she said was the same as hers.

Mr. RAICHLE: I assume——

The COURT: When there comes a time that is offered, I will give you a preliminary examination.

Mr. RAICHLE: Okay, fine.

By Mr. BERNSTEIN:

Q. Now, inviting your attention to Exhibit P-12 for identification, I ask you if you are able to identify that document, Mrs. Lutz?

A. Yes, Mr. Nicht dictated that to me.

Q. And what, if anything, can you tell us with respect to Mr. Nicht's practice concerning appointments?

A. Well, when Mr. Nicht had any appointments scheduled he so advised me.

Q. How did you——

Mr. RAICHLE: I probably sound technical but "whenever he had any appointments he so advised me;" she doesn't 1227 know whether he did or not. There were occasions he advised her he had appointment. I am sure he did not bare his life to this woman. He might have had appointments she didn't know about. She cannot state within the rules of evidence that whenever he had an appointment, he told her.

Mr. BERNSTEIN: If the Court please, I respectfully submit that that is the purpose of the cross-examination. If I am not

permitted to proceed to develop any points, the witness will be stopped. When the witness has completed her testimony, if there hasn't been a sufficient foundation laid, based on her own knowledge, and based on competent evidence, the documents will not be admitted. I respectfully submit this is proper cross-examination rather than an objection to a particular question.

The COURT: I take it there could be appointments made without your knowing?

The WITNESS: There could be. I recorded his business
1228 appointments as given to me.

The COURT: He did, with regularity, tell you there were appointments for the day?

The WITNESS: Yes, so that I would remind him.

By Mr. BERNSTEIN:

Q. Did you keep any record with respect to it?

A. Yes, I had an appointment book.

Q. And how did you make entries in that book?

A. I entered them as given to me by Mr. Nicht and then on the date of the appointment I would type the scheduled appointment for him for a given day.

Q. What, if anything, was his practice with respect to memoranda—strike it out. Did Mr. Nicht have a practice with respect to preparing memoranda following appointments?

A. Following appointments?

Q. Yes.

A. Yes, he did.

Q. What was that practice?

Mr. RAICHLE: If Your Honor please, to have this witness give the conclusion that something amounted to a practice is not proper. That is the basis of this objection to this line of
1229 inquiry when that word or synonym is used. She may tell what he did but it is for Your Honor to say whether it was a practice or not. They always like to wholesale it, "did he have a practice"—

The COURT: Overruled.

Mr. RAICHLE: What did he do, you decide.

The COURT: Overruled. This lady was just as close, obviously, as Miss Lennon and I are in our business relationship. She was his executive secretary or his second secretary, she is testifying

as to a routine, regular office practice. Overruled. Read the last question.

(Thereupon the last question was read by Reporter.)

By Mr. BERNSTEIN:

Q. What was that practice, what was his practice?

A. Following appointments?

Q. Yes.

1230 A. Invariably dictated memoranda to himself.

Q. When you say "memoranda to himself," do you mean in the form in which P-12 appears?

A. Yes.

Q. Now, where was Mr. Nicht's office located at that time?

A. On the fifteenth floor of 235 East 45th Street, Manhattan.

Q. And are you able to state whether or not it was customary for Mr. Koessler to be out of town on business trips during the period of April 21—

Mr. RAICHLE: Do you mean Koessler or Nicht?

By Mr. BERNSTEIN:

Q. Mr. Nicht?

A. I beg your pardon?

Q. Are you able to state, yes or no, whether it was customary for Mr. Nicht to be away from his office frequently on business during the period of April 21, 1954?

A. No, Mr. Nicht went on business trips very infrequently.

Q. And are you able to state the frequency with which he had business appointments?

A. No, I couldn't state that.

1231 Q. Are you able to state whether or not it was usual or unusual?

A. For what?

Q. To have business appointments?

A. He had regular scheduled business appointments but not necessarily out of town.

Q. Where were most of those held, what location, what geographic location?

A. I would say New York City.

Q. I invite your attention to Exhibit P-22 for identification—

A. This isn't my transcript.

Mr. RAICHLE: Wait a minute.

The WITNESS: This isn't my transcript.

By Mr. BERNSTEIN:

Q. Are you able to identify whose transcript it is?

A. Miss Contorno's.

Q. How would you describe this document?

A. In much the same manner as the others.

Q. Is this then a memorandum?

A. A memorandum to Mr. Nicht.

Q. Is this what you classify as a memorandum to himself?

A. Yes, sir.

1232 Q. Now, I invite your attention to page two, the portion of the page where it says, "Notes for F. J. N.;" are you able to tell us what that indicates?

A. Just notes for his own consumption.

Q. Was this unusual to be in a memorandum for himself?

A. No, I don't think it was unusual.

Q. Inviting your attention to document P-67 for identification—

A. Again this is—

Q. One minute, please.

A. Excuse me, I beg your pardon.

Q. Are you able to tell us who prepared that document?

A. Miss Contorno.

Q. Was that period the period of time when she was second secretary?

A. Yes.

Q. Was this a memorandum to himself?

A. Yes.

Q. I invite your attention to the marking in the center of that document, can you tell us what those are at the upper center of the document?

A. Are you talking about the shorthand notes?

Q. Yes.

A. I can read Greater Buffalo, I'm not too certain of
1233 the first few notes.

Q. The shorthand notes at the top say Greater Buffalo?

A. I believe that reads "All of this—attach all of this to Greater Buffalo Press."

Q. Do you know who prepared those notes?

A. No, I do not.

Mr. RAICHLE: What are you talking about?

The WITNESS: The Pitman shorthand in the center.

Mr. RAICHLE: Whose is it?

The WITNESS: I don't know, I'm trying to read the notes.

Mr. RAICHLE: It could be somebody in the Department of Justice.

The COURT: The witness says she doesn't know, they were not offered either.

Mr. RAICHLE: I mean to say, "Put this with Greater Buffalo——"

The COURT: Well, there is certainly nothing positive about it. The witness says she doesn't know.

By Mr. BERNSTEIN:

Q. Are you positive as to what the notes say?

A. The Pitman shorthand—I would read it, "Attach all of this to Greater Buffalo."

1234 Q. What was the practice with respect to filing documents that had come to Mr. Nicht's attention?

A. You mean Mr. Nicht's procedure for filing?

Q. Yes, ma'am.

A. If he wished them filed he would so mark them; if he wanted them attached to the follow-up, he would mark them, "Attach Greater Buffalo," or whatever it was.

Mr. RAICHLE: Was this——

Mr. BERNSTEIN: If the Court please——

Mr. RAICHLE: Wait, I'm entitled to something, too.

Mr. BERNSTEIN: I'm entitled not to be interrupted by a question.

Mr. RAICHLE: When you proceed improperly, I will interrupt.

The COURT: Now, these shorthand notes certainly were not Mr. Nicht's, were they?

The WITNESS: I can't identify them.

The COURT: Did he take shorthand and use it?

The WITNESS: Yes, I do. I wouldn't know whether these notes were Mr. Nicht's.

The COURT: When he, himself, assigned these memoranda to various files, in certain practice, did he put his note on there or dictate it?

The WITNESS: Yes, he would mark in pen or ink or
1235 pencil, file or attach to blank.

The COURT: Is that the nature of the thing you are looking at?

The WITNESS: No, It isn't. If he retained memoranda in his desk drawer, they were not marked file or attach follow-up.

The COURT: There is something on this particular exhibit—

The WITNESS: In shorthand?

Mr. RAICHLE: Which isn't his?

The WITNESS: I couldn't say.

Mr. RAICHLE: Did he write shorthand?

The WITNESS: Yes, he did.

Mr. BERNSTEIN: If the Court please, I respectfully object to any questions of the witness by Mr. Raichle at this time.

The COURT: I was asking some questions. I wanted to find out, it is of interest to me whether she believes that is Mr. Nicht's handiwork on there or someone else's.

The WITNESS: I don't know.

The COURT: All right. It isn't his signature or initials?

The WITNESS: No, it isn't.

1236 By Mr. BERNSTEIN:

Q. Do you know whether or not a secretary to Mr. Nicht would put instructions concerning the filing?

Mr. RAICHLE: I object to that with respect to that particular document.

The WITNESS: She could have; very often, I do that myself.

Mr. RAICHLE: I move to strike that out, she could have.

The COURT: You will have to establish a practice, Mr. Bernstein.

By Mr. BERNSTEIN:

Q. Was there any practice with respect to what you did concerning the filing of the documents under Mr. Nicht?

A. No, no, as I say, normally Mr. Nicht would indicate in his own handwriting whether the memoranda was to be filed or attached. If it were to be retained in his desk drawer then it did not carry pencil markings.

Q. Have there been occasions when you put stenographic notes on a document indicating what was to be done with it?

A. Yes. That was for my own information.

1237 Q. Do you know, of your own knowledge whether there were occasions when Miss Contorno did that?

A. No, I do not.

Q. I invite your attention to Exhibit P-68 for identification, and I invite your attention to the markings at the upper left-hand corner of that document. Can you tell us—

Mr. STEVENS: Wait until we get the document please.

By Mr. BERNSTEIN:

Q. I ask you whether you are able to state whether that indicates anything?

A. That looks like Mr. Nicht's ATT, which means attach to Eastern Color Printing Company follow-up.

Q. How do you know that means attach to Eastern Color Printing?

A. That was one of his practices, he has Eastern Color Printing Company underscored.

Q. Are you able to state it was a practice for him to underscore certain words in the documents indicating where it was to be filed?

A. In a case like this he would have to. You are referring to various situations.

Q. And so do I take it that because Eastern Color
1238 Printing Company is underlined, and the letters ATT are at the top in Mr. Nicht's handwriting, you conclude this was part of the regular practice of filing these documents in the Eastern—

A. I would say so, yes.

Mr. RAICHLE: I object to that conclusion.

The COURT: Overruled.

By Mr. BERNSTEIN:

Q. I ask you if you can identify this document?

A. Again, it is Miss Contorno's.

Q. What, if anything, can you tell us about this document in connection with what category, what type of document it is?

A. Again, it is a ready print matter, memorandum to Mr. Nicht, yes, the same.

Mr. RAICHLE: Which one are you talking about?

Mr. STEVENS: P-68.

By Mr. BERNSTEIN:

Q. Now, with respect to Government's Exhibit P-11 for identification——

A. This is——

Q. One minute, please.

A. I'm sorry.

1239 Q. We have to wait until the gentlemen get the documents.

Mr. RAICHLE: To avoid confusion.

Mr. BERNSTEIN: To help avoid confusion.

Mr. RAICHLE: It's a step in the right direction.

By Mr. BERNSTEIN:

Q. It has been stipulated that Ward Greene was the general manager of King Features Syndicate from January 1, 1954, to 1958. Mrs. Lutz, can you identify Mr. Greene?

A. This is an inter-office communication to Mr. Ward Greene, who was general manager at that time.

Q. Where did he maintain his offices at that time?

A. 235 East 45th Street on the tenth floor.

Q. King's office was where?

A. On the fifteenth floor at that time.

Q. And are you able to identify Government's Exhibit P-11 for identification?

A. Yes, that was dictated to me by Mr. Nicht.

Q. Was there a practice with respect to inter-office memoranda in the year 1954?

A. A practice?

Q. Yes, a company practice with respect to the form used?

A. You mean inter-office——

1240 Q. Yes, Ma'am.

A. Well, we used the letterhead, as you will note, and——

Q. Note on what, note on P-11?

A. Yes, and this, I might add, was always in duplicate. Memoranda to Mr. Nicht himself were only in original form, so that any memorandum to Mr. Greene or any other member of the organization were always in duplicate.

Q. And was there a practice with respect to the preparation or dictation of these memoranda to Mr. Greene by Mr. Nicht?

A. Was there a practice?

Q. Yes, ma'am.

Q. Well, I think Mr. Nicht kept Mr. Greene apprised of everything of any importance.

Mr. RAICHLE: I move to strike that out, it is not responsive.

The COURT: Strike it out. Was there a practice you observe of communication in this form?

The WITNESS: Yes, sir.

The COURT: Regularly done?

The WITNESS: Yes, sir.

1241

By Mr. BERNSTEIN:

Q. Are you able to state whether it was done routinely?

A. Yes, it was.

Q. I show you Exhibit P-13, and ask you if you are able to identify that document?

A. Yes, this is my transcript.

Q. What can you tell us about that document as to how it was prepared, what the practice was, what category it fits in and so forth? What does it appear to you to be?

A. It is a memorandum on the ready print situation.

Q. Not the subject matter; a memorandum to Mr. Greene?

A. Mr. Greene.

Q. Made routinely in accordance with the practice that you have described?

A. Yes.

Mr. STEVENS: I do not believe it is permissible for this gentleman to say, "Was it prepared routinely." He can ask Mrs. Lutz what she did and from what she did can be derived whether it was routinely. For him to put the rabbit in the hat and act surprised some hours later when we discuss admissibility of these documents seems improper. He has

1242 repeatedly spoken about, "Was there a practice;" I think Mrs. Lutz, with her long experience, is capable of telling us what she did so we can resolve whether it was routine.

The COURT: Supposing you follow that.

By Mr. BERNSTEIN:

Q. Tell us what you did as secretary, not only on one occasion, but—strike it out. Tell us what you did as secretary

concerning the preparation of memoranda to Mr. Greene from Mr. Nicht?

A. Well, I didn't prepare anything. I mean this is a routine inter-office memorandum to Mr. Greene dictated by Mr. Nicht.

Q. And you have described before Mr. Nicht's practices concerning dictating in the morning and in the afternoon; what, if anything, are you able to state concerning P-13 with respect to that conduct of Mr. Nicht's?

A. I don't know what I can tell you other than what I have described as his routine in the office, as far as his dictation was concerned.

Q. Are you able to state anything with respect to P-13 1243 in connection with the routineness of the preparation of this document?

A. No, just a general inter-office memorandum, commonly practiced.

Q. Ma'am?

The COURT: Commonly practiced.

The WITNESS: Commonly practiced. It still exists today.

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-14 for identification; are you able to state what that document is?

Mr. STEVENS: What are you talking about?

Mr. BERNSTEIN: Formerly No. 166.

The WITNESS: Again, it is an inter-office memorandum from Mr. Nicht to Mr. Greene. Mr. Greene returned it to Mr. Nicht, circled Mr. Nicht's name and said, "Please bring up Friday, WG."

By Mr. BERNSTEIN:

Q. How do you know that?

A. I recognize Mr. Greene's handwriting and, again, this is a common practice to circle the name of the individual to whom it's to be returned.

1244 Q. Which is Mr. Greene's handwriting on P-14?

A. It reads, "Please bring up Friday, WG."

Q. Are you referring to the portion where "please" is not written out?

A. It is "pls."

Q. I show you Exhibit P-21 for identification, and I ask you if you are able to identify that document?

A. Excuse me?

Q. With respect to P-21, are you able to identify that document?

A. This is another routine inter-office communication. I did not transcribe it; Miss Contorno did.

Q. A routine inter-office communication to whom?

A. Ward Greene.

Q. I notice this is a carbon copy, not on the stationery as was P-14?

A. The original should have been on the letterhead.

Q. What are you able to tell us about this document, P-21?

A. Well, in the upper right-hand corner I identify the Att. as my handwriting and my initials, "ML." "Greater Buffalo" wasn't written by me.

Q. What does that Att, ML indicate?

A. Attach.

Q. What would you do with that document?

1245 A. I would have sent that to file for attachment.

Q. To the Greater Buffalo Press file?

A. Yes, sir. That isn't my handwriting, "Greater Buffalo."

Mr. STEVENS: Your Honor, this handwriting is not visible on the copies we have. We would like to be sure what it says.

The WITNESS: "Greater Buffalo" isn't my handwriting. The "Att" is.

Mr. RAICHLE: Which was put on first?

The WITNESS: I beg your pardon?

Mr. RAICHLE: Which was put on first?

The WITNESS: I don't know.

By Mr. BERNSTEIN:

Q. Do you recall whether or not when you had this document and inserted the words "Att" and "ML," whether the words "Greater Buffalo" were on that document?

A. I don't know.

The COURT: If it hadn't been on there what would you be able to do with it?

The WITNESS: This would have gone to the file.

The COURT: If there hadn't been anything, "Greater Buffalo" on there, what could be done in accordance with your
1246 office routine? If it had your words on there, "Att," what would happen?

The WITNESS: I should think it would have gone to the Greater Buffalo file.

The COURT: Why is that, from your experience? I mean without those words that you say were not written by you? You look to the body of the communication then?

The WITNESS: Yes.

The COURT: Did that sometimes happen as a routine, there was no designation to file at the top, just "Att?"

The WITNESS: Yes—well, no, because the file clerk would question it as to when and where it should be filed, what file it should be. We would have to designate where it was to be filed or attached.

The COURT: At some time it just said "Att" and got to the file clerk and that person would have to explore where you wanted it filed?

1247 The WITNESS: Yes.

The COURT: Does that happen with some regularity?

The WITNESS: Not with too much regularity; we very clearly define the attachments.

The COURT: How would the document you have in your hand indicate to the file clerk where to file it?

The WITNESS: That is why I said she would have to question it, because this relates to not only Greater Buffalo but International Color Printing Company as well.

By Mr. BERNSTEIN:

Q. Are you able to state whether you ever received inquiries from the Filing Department as to where to file certain documents?

A. If she were in doubt.

Mr. RAICHLE: Who is "she?"

The WITNESS: The head of the File Department, Mrs. Levy.

The COURT: How large an organization was this, executives and employees? I am talking about Manhattan.

1248 The WITNESS: I can only speak for the sales department in which I was so employed. I would say that perhaps there were fifty, including field representatives.

The COURT: How many clerical people, approximately?

The WITNESS: Clerical? I'm only speaking for the Sales Department. The fifty includes the field representatives as well

as the employees of the Sales Department, general employees I am speaking of.

By Mr. BERNSTEIN:

Q. How many clerical employees at that location at that time, approximately?

A. Well, I would hazard a guess, probably twenty.

Q. Who is in charge of the office at that time?

A. Ward Greene.

Q. You said——?

A. Ward Greene was general manager; Mr. Nicht was vice-president and general sales manager——

Q. Now——

Mr. RAICHL: Who was over who?

The WITNESS: Ward Greene was general manager of the organization over Mr. Frank J. Nicht.

1249 By Mr. BERNSTEIN:

Q. Ward Greene, although he maintained offices in the same building, had his office somewhere else, is that correct?

A. On the tenth floor, yes.

Q. What was located at the office on the fifteenth floor?

A. The Sales Department, domestic sales.

Q. Who was in charge of that department?

A. Mr. Nicht.

Q. Who prescribed the office practices and routine practices with respect to the Sales Department?

A. Mr. Nicht.

Q. I show you Exhibit P-20 for identification——

A. This isn't my transcript.

Q. Just a moment, please.

The COURT: Is Ward Greene still living?

The WITNESS: No, he is not.

Mr. RAICHL: When did he pass away?

The WITNESS: Mr. Greene? I don't recall the year; perhaps it could have been six or seven years ago. He was succeeded by Frank C. McLearn.

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-20, are you able to
1250 identify that document?

A. This isn't my transcript. Again it's a memorandum to Mr. Nicht.

Q. What does it appear to be to you? Strike the question. Whose transcript is it?

A. Whose transcript is it? Miss Contorno's.

Q. What are you able to tell us with respect to P-20 as to how it was prepared?

Mr. RAICHLE: As I understand it, she did not prepare it.

The WITNESS: I couldn't tell you that.

By Mr. BERNSTEIN:

Q. With respect to the practice of preparing documents, concerning memoranda to Mr. Nicht—

Mr. RAICHLE: She told us about that, she doesn't know a thing about this document, so she says; she didn't prepare it.

The COURT: Now, what Mr. Bernstein is trying to bring out is that this is a typical type of memoranda made in accordance with the regular business practice with which this lady is most familiar. Now, true, she didn't make it out. Does it follow the format, the pattern?

1251 The WITNESS: Yes.

The COURT: A regular inter-office communication?

The WITNESS: This isn't an inter-office communication.

Mr. RAICHLE: Just a minute. Does Mr. Bernstein embrace what Your Honor said, this is typical; yes or no?

Mr. BERNSTEIN: The preparation of this document is typical, routine fashion, yes, sir.

Mr. RAICHLE: And illustrative of the others, is that correct?

Mr. BERNSTEIN: Yes, sir. Not illustrative of the others; it is prepared—

Mr. RAICHLE: Look what we are doing, would Your Honor please?

The COURT: If you are talking about the contents of it—

Mr. BERNSTEIN: We are talking about the preparation of the document.

Mr. RAICHLE: Look at the bottom of it, see what is going in here.

The COURT: Well—

By Mr. BERNSTEIN:

Q. I invite your attention to the questions at the bottom of Exhibit P-20, which has been invited to the Court's attention, and I ask you whether or not you had occasion, you personally had occasion to prepare notes on memoranda in that fashion?

1252

A. Yes. The answer would have to be yes.

Q. On what occasion, tell us, if you please?

A. I can't enumerate any occasion, but quite frequently following his visits Mr. Nicht would dictate these memoranda to himself.

Q. What were done with them?

A. They were placed in his desk drawer unless they were marked "file" or "attach follow-up."

Q. Who would prepare these memoranda?

A. Mr. Nicht.

Q. He would dictate them; who would do the typing of them?

A. The so-called second secretary, who at that time was Miss Contorno.

Q. Were any of them done by the executive secretary?

A. Could have been.

Q. On what occasions?

A. I can't answer that.

Q. You testified before concerning the difference in duties between the executive secretary and the second secretary?

1253 A. Yes. If Mr. Nicht chose to dictate one of these to his executive secretary, he would do so. That was not his practice as a rule.

Q. I show you Exhibit P-24 for identification, formerly known as Document 106, and I ask you if you are able to identify that document?

A. Again, this was transcribed by Miss Contorno.

Q. What does the document appear to you to be?

Mr. RAICHLE: I object to that.

The COURT: It's the same thing back again. What you are talking about, is that typical?

Mr. BERNSTEIN: This is different.

The WITNESS: This is a little different.

The COURT: Let me see that. I don't have any of these. Did you have in mind giving me copies?

Mr. BERNSTEIN: I had in mind Your Honor would see the original.

The COURT: I know it would be helpful if I saw them as they come up. Each party has one?

Mr. BERNSTEIN: Yes, sir.

By Mr. BERNSTEIN:

Q. What is that document, Mrs. Lutz?

1254 A. This is the so-called sales bulletin.

Q. And I invite your attention to the number 14243; what can you tell us about that Exhibit 24? I ask you what, if anything, can you tell us concerning that numbering system?

A. These sales bulletin have to bear a number because if, say six months later, we wish to obtain a copy of the bulletin relating to KFS-ICP- Greater Buffalo Press, it would be rather difficult to obtain if these were not kept in sort of a numerical order.

Q. And what can you tell us about the practice of—strike it out. Did Mr. Nicht have a practice with respect to the preparation of the sales bulletins?

A. Yes.

Q. What can you tell us about that practice?

A. The sales bulletins were issued frequently, particularly when we obtained new features for sale. These bulletins were distributed to all sales assistants, men in the field, and other individuals in the company.

Q. What can you tell us with respect to P-24, that particular document, with respect to that practice you have just described?

A. What can I add to what I have said?

The COURT: This is one of those?

1255 The WITNESS: Yes, it is.

By Mr. BERNSTEIN:

Q. I invite your attention to Exhibit P-40 for identification, and I invite Your Honor's attention to the last—it was formerly known as Document 102—I invite Your Honor's attention to the notation at the bottom of the document, typed in the Document P-40 for identification, which is a document from J. W. Koessler, President of Greater Buffalo Press, Inc., addressed to Mr. Frank J. Nicht, King Features Syndicate. Mrs. Lutz, inviting your attention to P-40 for identification, I invite your attention to the typed words at the bottom of the document and ask you if you can tell us what that is?

A. A copy of this letter was made for attachment to the Memphis Commercial Appeal readyprint follow-up.

Mr. RAICHLE: We don't object to this document.

By Mr. BERNSTEIN:

Q. And what do the letters "fu" indicate?

A. Follow-up.

Q. Is that an abbreviation for "follow-up?"

A. Yes.

1256 Q. And the initials following that, "MEC?"

A. Miss Contorno.

Q. What was the practice with respect to attaching items like that on the bottom of incoming mail?

A. Well, Mr. Nicht must have suggested that a copy be made for that particular readyprint follow-up rather than the general file.

Mr. RAICHLE: I move to strike it out.

The COURT: You didn't have any objection to this exhibit?

Mr. RAICHLE: No.

The COURT: I am going to receive that now. We don't need this lady to tell us.

Mr. RAICHLE: This is a letter from us.

The COURT: This offer is received, mark it in evidence.

Mr. BERNSTEIN: Thank you.

The COURT: If there is some attachment and something was done with it, and this lady knows about it, that is another subject.

Mr. BERNSTEIN: Yes.

The COURT: It is now an exhibit by consent. You have no objection, Mr. Stevens?

1257 Mr. STEVENS: No.

(Thereupon Government's Exhibit P-40, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Did you place any notations on that document?

The COURT: I want to be sure—there is no objection to it by Mr. Raichle—it involves NEA, I assume you have no objection?

Mr. STEVENS: We have no objection.

The COURT: All right.

The WITNESS: The Pitman notes are not mine. They read: "Make copy for Memphis follow-up."

By Mr. BERNSTEIN:

Q. What was kept in the Memphis follow-up file of King Features?

A. Apparently there were general follow-ups consisting of regular correspondence in a follow-up pertaining to readyprint only.

Q. What was the Memphis Commercial Appeal?

A. A Newspaper.

1258 Mr. BERNSTEIN: At this time, Your Honor, the Government offers in evidence, as entries made in the regular course of business, all of the documents identified by this witness; namely, Exhibit P-10, P-19, P-12, P-22, P-68, P-13, P-21, P-20, P-67, P-11, P-14, P-24; and represents to the Court that following this witness's testimony the Government proposes to offer other evidence by deposition in which it contends a conspiracy will be established between Greater Buffalo and King, and reserves the right to offer some of these documents at that time after that evidence is introduced as declarations of a co-conspirator, in addition to entries made in the regular course of business.

Mr. RAICHLE: May I have a voir dire?

The COURT: Yes.

PRELIMINARY EXAMINATION

By Mr. RAICHLE:

Q. When did Mr. Nicht pass away?

A. February 17, 1964.

Q. When did Mr. Greene pass away?

1259 A. I'm not sure of that date, as I told you before; approximately seven years ago. That may or may not be so.

Q. That is your best recollection?

A. That is my best recollection.

Q. Then, above Mr. Nicht in the heirarchy of the management structure was Mr. Greene, is that right?

A. Yes.

Q. During his lifetime?

A. Yes.

Q. He was succeeded by Mr. McLearn?

A. Yes.

Q. And about those two gentlemen, about the position held by those two gentlemen, who was the next one in the chain of command?

A. I would say Mr. Nicht.

Q. No, no; above Mr. McLearn, above Mr. Greene, who was in command?

A. We have our Hearst executives uptown. I can't say whether Mr. Gortatowsky or Mr. Berlin—which of those was his superior. I couldn't answer that.

Q. Let's get at it a different way, start from the top. In 1954, '55, '56, '57, those years, who was the president of the Hearst Corporation, or the chief executive?

1260 A. Mr. Berlin, as I understand it.

Q. All right. And you knew King Features was a division of Hearst?

A. Yes.

Q. All right. Now, under Mr. Berlin, when he was during those years the president, who was next in line?

A. I don't know.

Q. And below him who came?

A. If you are speaking of the Hearst executives uptown I would not be able to answer your questions.

Q. Mr. Greene and Mr. McLearn were the ones in your orbit who were above Mr. Nicht; right?

A. Yes.

Q. Now then, did you ever see any written rules or regulations or instructions with respect to the keeping of memorandums emanating from either Mr. Greene or Mr. McLearn?

A. No.

Q. You don't know of the existence of any such instructions, do you?

A. No.

Q. Mr. Nicht, you say, from time to time on occasions wrote memorandums to himself, is that correct?

A. Yes.

1261 Q. Did he talk to himself once in a while?

A. No.

Q. Not in your presence?

A. No, not in my presence.

Q. He used to complain of not sleeping, did he not?

Mr. BERNSTEIN: I object to this, Your Honor.

Mr. RAICHLE: This is a preliminary.

By Mr. RAICHLE:

Q. Is that right?

A. Yes, it is right.

Q. Didn't he tell you that on occasion when he didn't sleep he got up and occupied himself by dictating into a machine?

A. No, he didn't. He never used the dictaphone machine to my knowledge.

Q. Did he tell you he made memorandums at night?

A. He did that, yes.

Q. Then some days later, after he made the memorandums, he would suggest somebody copy them?

A. Yes, re-dictate them.

Q. These nocturnal inspirations that he had from time to time would be on occasion reduced to pencil memoranda, you say?

Mr. BERNSTEIN: I object.

1262 The COURT: What is the basis of the objection?

Mr. BERNSTEIN: "Nocturnal inspirations."

The COURT: That is a little poetic license here that Mr. Raichle uses once in a while.

Mr. RAICHLE: That was intended as a pleasant description; nocturnal means "night." I don't mean the man's name. It means that period of darkness between sunset and sunrise.

The WITNESS: Yes, Mr. Nicht's name is spelled N-i-c-h-t.

By Mr. RAICHLE:

Q. There is no confusion on the subject?

A. No.

Q. So that at night—spelled in the conventional way—

Mr. Nicht used to, on occasion of his insomnia, make notes?

A. Yes, he did.

Q. And sometimes he brought them down in pencil form and some days later suggested somebody write them up, is that right?

A. He would dictate them.

Q. He would dictate them? He would dictate or he
1263 would—

A. I would dictate or he would have somebody copy them.

Q. Sometimes the somebody was you?

A. Could have been.

Q. That is as strong as you can make it. Sometimes the somebody was somebody else?

A. Yes.

Q. There was no particular habit or custom about that; whoever happened to be around when he did on occasion choose to make these notes, he would dictate to; right?

A. Yes.

Q. Now, you said that, as to these notes or memorandum to himself, no copies were made, only the original?

A. They were made only in original form.

Q. I see. And he apparently had a desk somewhere into which the notes found their way?

A. Yes.

Q. Right?

A. Yes.

Q. I suppose Mr. Nicht had a drawer for his personal things, like his check book and his insurance policies, things like that?

A. I don't know of any insurance policy. The check book he retained. I had a checkbook in my desk drawer that
1264 I took care of.

Q. He had personal things in his desk?

A. Yes.

Q. I don't mean to be intrusive, but personal things such as what? Those generally comprehended by the terms; personal correspondence with friends—?

A. Well, he would retain that in his desk drawer, yes.

Q. This same drawer you have been referring to?

A. Yes.

Q. I suppose he had to get tickets, baseball tickets, football tickets, for people from time to time?

A. Yes, he did.

Q. And among those heterogeneous things, you refer to these memorandums about his night time thoughts, which would on occasion find their way?

A. Yes.

Q. Now, sometimes I suppose if he had a busy morning or a busy day, some period of time would go by before he would transcribe whatever notes he made at night?

A. Well, I don't think Mr. Nicht made notes so frequently at night.

Q. Sometimes he made them in the daytime too, or was he too busy?

A. He always had somebody there at his disposition
1265 to dictate.

Q. Now, just in respect to Mr. Nicht's passing—I am
not commenting on his idiosyncrasies, we all have them, but
he used to sometimes make notes about his hunches and on
other occasions about his suspicions and on occasion about his
predictions; right?

A. He did.

Q. And he was a moody man, wasn't he; some days he was
elated, some days cross?

A. I think we are all like that.

Q. He was that way?

A. He was human.

Q. All we have to do to reflect his mood is to read some of
these notes to himself, is that so?

Mr. BERNSTEIN: I object, Your Honor.

The COURT: Overruled.

By Mr. RAICHLE:

Q. All you have to do to recall his mood is to read those
notes?

Mr. BERNSTEIN: I object.

The COURT: Overruled.

By Mr. RAICHLE:

1266 Q. Is that right?

A. I don't know whether I could associate his mood
with his dictation.

The COURT: I won't limit your examination, but when you
are talking about these night writings for whatever purpose,
I had the impression what Mr. Bernstein was offering were
phone calls jotted down or made shortly after the call?

Mr. RAICHLE: No, no.

The COURT: I don't know that.

Mr. RAICHLE: Your Honor has not been favored with the
documents.

Mr. BERNSTEIN: Let's take a little something here—

The COURT: What I am talking about, Mr. Raichle, I had
the impression that he got phone calls and then he dictated
what he considered the nature of them to be. I don't know yet
when he did that. I assume it was during the day. Then I
understand there were visitors and they came by appointment

through Mrs. Lutz, and they sat down and he again made a memorandum of that visit. At night when he got through with his day's work he apparently made some more notes about business. That is the image I have now.

Mr. RAICHLER: Your Honor Has not been favored with the documents.

By Mr. RAICHLER:

Q. You don't remember, as you sit there, any one of these particular documents counsel referred to; remember transcribing or having to do with any one of these documents?

A. If they bore my initials.

Q. Because they bear your initials makes you think you must have had something to do with it; right?

A. I would have to had transcribed it.

Q. Do you remember transcribing this document here? If you do remember, say so, if you don't remember, say so.

A. I didn't transcribe that.

Q. This is Exhibit 107—

Mr. MOORE: Document 107.

Mr. RAICHLER: But it says 107, and somewhere else it says PX-20.

1268 Mr. MOORE: P-20 for identification.

By Mr. RAICHLER:

Q. Let's take this one, it happens to be the one in my hand. Now, he said here: "Combinations such as we have in mind probably would make it possible for us to obtain increases in printing prices for him such as St. Louis, Kansas City, Cleveland, etc." He was in the habit of recording on occasion, from time to time when the spirit moved him, his mental operations?

A. Yes.

Q. Now, let me take you to the back of this document where it says: "Why is he so difficult to reach?" "What happened to his AP Printing?" "Why does he stir things up in Texas?" To whom was he addressing those questions?

A. I know nothing about this document.

Q. I see. Did he used to write that stuff to you once in a while?

A. He could have.

Q. Hypothetical, or rather, rhetorical questions?

A. Yes, he could have.

Q. Would you answer them?

A. No, I wouldn't answer them.

1269 Q. Did you know to whom he was addressing them?

A. To himself.

Q. He was addressing questions to himself?

A. Isn't that obvious?

Q. It seems to me so, but did he ever get around to sitting down and dictating answers to his questions?

Mr. BERNSTEIN: I object to this, Your Honor.

The COURT: Overruled.

The WITNESS: No.

By Mr. RAICHLE:

Q. Why was it—they always say you should not start a question on cross-examination with "why"—why, if you know, was no copy kept of these memorandums to himself?

A. He instructed us to write them in original only.

Q. You say "us;" were you present when he instructed anybody else in that regard?

A. No, that was—well, we were—he would instruct Mrs. Contorno or me not to make copies, not to make carbons of memorandum to himself.

Q. On the grounds they were personal to him?

A. That is right.

Q. That is the reason he stated?

A. Yes.

1270 Q. That is the explanation he gave?

A. Yes.

The COURT: I hate to interrupt. I just read 20 over, Mr. Bernstein. I am looking at Section 32 which says, "It was the regular course of business to make a memorandum of any act, transaction or occurrence or event." You don't consider that an act, transaction or occurrence or event, do you, this philosophical recital in 20, of talking about Mr. Koessler with somebody else? He doesn't say Koessler did anything. It talks about Koessler ought to save money if we were his sales agents. I don't see where that is an act, event or occurrence. It is an event that Mr. Nicht wrote Mr. Greene apparently, but it doesn't identify it as an act, transaction, or occurrence, as I understand it.

Mr. BERNSTEIN: The event, Your Honor—this document is being offered as a business record under the authority of the United Shoe Machinery Case, 80 Fed. 2nd. Sup. 349.

1271 I am quoting from page 354: "All these writings are admissible not only for the purpose of showing orders of the superior, but pattern of conduct of conducting business, contemporary explanations of ambiguous conduct and motive." These documents are offered for the purpose of showing that an individual, who was sales manager in charge of this office, made a memorandum to himself, and I urge the Court that the memorandum will not and does not indicate an individual who is unbalanced by writing notes to himself. This is the form in which he believed it necessary to preserve a record of what somebody else had told him or what his thoughts were.

The COURT: I don't believe anybody else told him anything here. To me it is a document of musings, about something that he think exists in the business world.

1272 Mr. BERNSTEIN: This particular document, P-20, is being offered for the purpose of showing the intent, the state of mind and the purpose of Mr. Nicht at the time that he made certain arrangements with Greater Buffalo, which would be evidenced later. It is offered for that purpose. It is the record—

The COURT: I didn't want to interrupt. This is the only one of these I have read. I don't know whether they are all similar. I suspect they are not.

Mr. BERNSTEIN: They are not, Your Honor.

The COURT: All right, go ahead.

Mr. RAICHLE: Thank you, Your Honor.

By Mr. RAICHLE:

Q. Well now, here's another one, this is No. 266—what is the exhibit number?

Mr. BERNSTEIN: P-67.

By Mr. RAICHLE:

Q. This is the one with the shorthand on it. Is this one of these that went into his desk drawer among the 1273 keepsakes?

A. I would say yes because it is not marked "file" or "attach to the follow-up."

Q. I see. Did he throw away some of these memorandums to himself from time to time?

A. Not to my knowledge.

Q. I see. Would he put them in the drawer?

A. He would.

Q. You just gave them back to him; sometimes you saw him put them in the drawer?

A. Yes.

Q. Now, you never knew of anybody else seeing any of these after they went in the drawer?

A. No, I did not.

Q. Take one like this that we are talking about here; the document says: "Mr. Koessler knows that we are trying to complete our contract with International Color Printing Company;" that is obviously a conclusion, isn't it?

Mr. BERNSTEIN: I object, Your Honor.

By Mr. RAICHLE:

Q. It says: "Apparently he is fixed all right," see that?

A. Not dictated to me.

1274 Mr. BERNSTEIN: Where is the "apparently?"

Mr. RAICHLE: The third paragraph.

By Mr. RAICHLE:

Q. Here's a prediction: "Koessler will undoubtedly want to transfer Atlanta, Nashville and Mobile to that plant," referring to the Coosa River Plant. In addition to his suspicions or his, as he refers to them, hunches, as he refers to them in other letters, he had the habit of sometimes, and on occasions spaced apart, making predictions to himself, right?

Mr. BERNSTEIN: I object.

The WITNESS: I don't know.

By Mr. RAICHLE:

Q. The documents show that?

A. I know that isn't mine.

Q. I see.

A. If you are reading from that, I'm not familiar with that, the contents of that.

Q. I see. Here's a good one, No. 267, what would the exhibit number be there?

Mr. BERNSTEIN: One minute, please. P-68 for identification.

By Mr. RAICHLE:

1275 Q. August 17, 1955; this is one my friend asked you about. It says here: "I have a hunch, —" see that?

A. Yes.

Q. It says: "Ham seemed to like the idea—" who is Ham?

A. Could have been Ham Moore.

Q. Ham Moore. Now—

A. Again, this isn't my transcript.

Q. I see. Let's settle one thing; you don't know what the practice was with respect to transcripts not yours, right?

A. You are reading from these as though I should be familiar with them.

Q. The fact is you are not?

A. No. All I know is that I identified that as a memorandum dictated by Mr. Nicht to himself. This is the practice he followed in dictating memorandums to himself.

Q. Did he ever tell you why he was doing such a thing as that?

A. No, he did not.

Q. Did you ever wonder?

A. No.

Q. All right. Did you ever ask him?

1276 A. No.

Q. Did you ever see anybody else around there doing that sort of thing?

A. Well, some of our boys follow that practice today.

Q. Now then, in your direct testimony you mention a name, Hornady, do you remember that?

A. I beg your pardon?

Q. In your direct examination, when Mr. Bernstein was asking you questions, he asked you about a man named Hornady?

A. He didn't ask me, I volunteered, I said I was Mr. Hornady's secretary for a period of about seven years.

Q. How recently have you seen Hornady?

A. I haven't seen him since he left King Features Syndicate.

Q. What was Hornady's job at King?

A. He was one of Mr. Nicht's sales assistants.

Q. And did Mr. Nicht ever show any of these memorandums to himself to Mr. Hornady in your presence?

A. I don't recall.

Q. You can't ever remember his showing them to anybody, can you?

A. No, I don't.

Q. Where was Nicht's office?

1277 A. He was located at 235 East 45th Street in Manhattan. At that time we were on the fifteenth floor. Today we are on the eleventh, and we were on the eleventh at the time of his demise.

Q. In 1954, '55 and '56, where were you?

A. The fifteenth floor.

Q. He had a private office, did he?

A. Yes.

Q. And there was a file cabinet or filing cabinet in the office?

A. Not in his private office. We have a central filing system which is located on the same floor but outside of Mr. Nicht's office.

Q. And in the central filing system was kept the files of the company?

A. Yes.

Q. That is, the King Features Division of Hearst?

A. That is right.

Q. And at the end of the day any matters that were to be filed as a company matter was filed in those files?

A. Filed or attached to the follow-up.

Q. He didn't keep company files in his desk drawer, did he?

1278 A. No, unless occasionally he asked for a particular file and wished to retain it in the desk overnight. That went back to the files.

Q. They were not handled in the manner the memorandum to himself were handled?

A. No.

Q. You said something about that you thought the memorandums to himself were more usual than unusual. I made a note of that. Do you recall saying that?

A. Yes, but it was in response to a question that Mr. Bernstein asked.

Q. He didn't make memorandums to himself about everything that occurred, just——

A. No, he didn't.

Q. A great many things occurred to which he made no memorandums to himself?

A. That is right.

Q. Weeks would go by without making such memorandums?

A. It is very possible.

Q. Sometimes months?

A. Could have been.

Q. Did he ever tell you what determined whether he would write to himself about something and what determined when he would not so write?

A. No.

Q. He had no habit about that that you know of?

1279 A. No.

Q. And if there was any standard of selectivity, you don't know what it was?

A. No, I wouldn't know that. I know the practice that he followed.

Q. The practice was when he wanted to, he dictated to you or someone else?

A. Yes.

Q. What determined the desire on his part to do it, you don't know?

A. I don't know.

The COURT: May I ask a question, Mr. Raichle? Did this man, Greene, write similar memorandums when he got phone calls and had thoughts?

The WITNESS: I wouldn't know.

The COURT: You never saw—

The WITNESS: He was on another floor in some private office and had his own secretary. They would be able to answer that question.

The COURT: Did you ever examine a file, like Greater Buffalo Press, and see similar memorandum from Mr. Greene in there?

The WITNESS: No, I never examined the files, Judge.

1280 The COURT: You did not?

The WITNESS: No.

The COURT: Now, you were the executive secretary for Mr. Nicht; have you ever seen any memorandum come from Mr. Greene to Mr. Nicht similar to the type of thing he has been writing?

The WITNESS: Inter-office, yes.

The COURT: I'm talking about similar to those exhibits?

The WITNESS: Not similar, no, no.

The COURT: What were the nature of Mr. Greene's inter-office communications as distinguished from these shown you today?

The WITNESS: Well, I couldn't describe the nature, Judge.

The COURT: What is an inter-office communication as distinguished from these we have looked at today from Mr. Nicht?

The WITNESS: An inter-office communication would be from, say, for instance, Mr. Nicht to Mr. Greene, or Mr. Nicht to Mr. Berlin, whereas these individual memorandums to Mr. Nicht were just retained in the office, they didn't pass from one person to another.

The COURT: They were not passed around?

The WITNESS: No.

The COURT: I think we will take a short recess.

(Thereupon, the court was in recess at 3:35 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 3:55 p.m.)

Mr. RAICHLE: I just have a few questions of the witness.

By Mr. RAICHLE:

Q. Did you know of any general instructions prevailing at King Features Division of Hearst with respect to the destruction of records at all?

A. No.

Q. I mean were there periods of time when the files were gone through for the purpose of destroying—I don't mean anything sinister—

A. That would be the function of the File Department. I couldn't answer that question.

1282 Q. Whether there was a general practice with respect to the destruction of files periodically or not, you wouldn't know?

A. I wouldn't know.

Q. You know nothing about the filing practices or the instructions in that regard?

A. No.

Q. And these memorandums that counsel has been offering in evidence, and as to which you have testified, came from Mr. Nicht's desk, not from the files?

A. Yes, sir.

Mr. BERNSTEIN: I object, Your Honor.

The COURT: Overruled. This is cross-examination.

Mr. BERNSTEIN: If the Court please, my objection is to wholesaling all of the documents, because it was clear from the testimony that originally there were different categories of documents, not in the wholesale lots, as counsel is doing, offered individually, and the witness was questioned about each document individually.

By Mr. RAICHLE:

Q. Let me see; who took the documents from Mr. Nicht's files, do you know?

1283 A. No.

Q. Strike that out. You got me in a bad habit. Who took them from his desk?

A. I don't know.

Q. Mr. Nicht went to the hospital, was in the hospital at the time they were taken from his desk?

A. I couldn't answer that question, I don't know.

Q. Well, you hadn't seen them between the time of the spaced occasions when he would put these memorandums, or whatever they are, to himself in the drawer, you hadn't seen them from the time he put them in?

A. Unless I had occasion to go to his drawer for something, they were there.

Q. Now, when did he go to the hospital?

A. That man has been hospitalized so many times, so many operations, I can't be specific. He had at least, I would say, three or four majors, spaced years apart.

Q. In 1959 was he in the hospital?

A. 1959?

Q. Take your time, I'm not trying to press you. If you don't know you can say you don't.

A. I can't say, no.

Q. Was he in the hospital in 1961?

1284 A. I'm not sure of dates.

Q. Or 1960. Now, do you know how or through what medium the Government came in possession of the documents that were in his desk drawer?

A. I beg your pardon.

Q. Do you know how or through what medium the Government came into possession of the documents that were in his desk drawer?

A. No, I don't.

Q. No one told you?

A. No, sir.

Q. Now, when did you first know you were coming here?

A. Oh, let me see—

Q. Last week some time?

A. Yes, last week.

Q. You never talked to me except as Mr. Bernstein introduced me to you in the elevator at noon?

A. No, I never saw you before.

Q. You never saw Mr. Moore before?

A. Ham Moore?

Q. No, Ham Moore is an alleged conspirator; I am speaking of James Otis Moore.

A. Not this Mr. Moore.

Q. You haven't seen Mr. Stevens before?

A. No, sir.

1285 Q. You haven't talked to anybody representing any of these defendants before you got on the stand?

A. No, sir.

Q. Mr. Bernstein asked to adjourn early so he could talk with you?

A. That is correct.

Q. You did talk with him?

A. Yes.

Q. Now, had you talked with any other Government representative before?

A. Mr. Feldman.

Q. When did you talk with him?

A. I believe it was last Thursday.

Q. Where?

A. In my office, or Mr. Roger's office at the Syndicate.

A. Yes.

Q. He took Mr. Nicht's place?

A. Yes, he succeeded Mr. Nicht.

Q. Mr. Rogers' office?

A. Yes.

Q. He is your present boss?

Q. He doesn't write to himself, does he?

A. Well, he writes memoranda.

Q. Not this character of memoranda, does he, be fair?

1286 A. What do you mean, "this character?"

Q. Well, does he write, "Why does he do this?" "Why does he stir up trouble in Texas?"

A. He writes memoranda following visits with other people.

Q. You don't know whether he does or not, do you?

A. He may.

Q. That is as strong as you can put it?

A. Yes.

Mr. RAICHLE: That is all.

DIRECT EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Have you transcribed any memoranda dictated to you by Mr. Rogers following appointments with other people?

A. I don't think so, no. Again, he may have dictated to the so-called second secretary.

Q. Does Mr. Rogers dictate memoranda of telephone conversations?

A. Yes, he does.

Q. And what is the difference in practice between Mr. Rogers' practice and Mr. Nicht's practice with regard to dictating memoranda?

A. He follows pretty much the same procedure except
1287 Mr. Nicht seemed to have more memoranda on ready-print than Mr. Rogers would have.

Q. How long has Mr. Rogers held the position that he has had?

A. Since Mr. Nicht's demise.

Q. Do you recall the date?

A. February 17, 1964.

Q. And I show you Government's Exhibit P-10, and I invite your attention to the first sentence: "Walter Koessler phoned me early this morning from Buffalo." I ask you whether that was the kind of memorandum that was dictated after the notes that Mr. Nicht would make at night, as Mr. Raichle referred to?

A. I couldn't say that.

Mr. RAICHLE: The documents speak for themselves, or they don't speak at all.

The COURT: This is the result of a phone call, this has nothing to do with a night writing.

By Mr. BERNSTEIN:

Q. What can you tell us about the manner in which the documents were kept in Mr. Nicht's desk drawer?

A. Oh, I don't think there was any routine to that. They were placed in the drawer, and whether they were kept in a chronological order, I don't know. I doubt that.

Q. Do you know whether he had any filing system in the drawer?

A. I would say he did not.

Q. Do you know whether—was there any section of the desk that was devoted to filing documents, as distinguished from football tickets and other items?

A. No, he would just place the memorandums in his desk drawer.

Q. Exhibit P-10, is that one of the documents that was in the desk drawer or sent to file?

A. This should have been in the drawer.

Mr. RAICHLE: Wait a minute, if she knows. What was the answer?

The WITNESS: This should have been in the drawer.

By Mr. BERNSTEIN:

Q. Exhibit P-11, are you able to state whether this was in the drawer or sent to the files?

Mr. MOORE: Wait a minute—

The WITNESS: This is a copy, this is a Xerox copy.

The COURT: Let me find that before you talk.

Mr. BERNSTEIN: Your Honor, could we substitute the 1289 copies and give the witness the original?

The COURT: Yes.

The WITNESS: There isn't any markings for file or attachment to follow-up. I would say this would have come from his desk drawer.

By Mr. BERNSTEIN:

Q. And what, if anything, can you tell us about the practice of keeping memoranda to Ward Greene?

A. Well, I would say this wasn't generally done. Primarily, memoranda to himself were kept in his desk.

Q. Memoranda to——

A. Lacking markings, I have to say this would have come from his desk drawer.

Mr. RAICHLE: That is the one of May 26th, 1954?

The WITNESS: April 15, 1954.

Mr. RAICHLE: Oh, all right. Anything lacking markings to the contrary, to the best of your knowledge, came from his desk drawer?

The WITNESS: Yes.

1290

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-12, are you able to state whether this document went into the regular company files?

A. My answer would have to be the same. I don't know whose handwriting that is at the upper right-hand corner reading, "Buffalo, New York, Greater Buffalo Press." I do not recognize the handwriting.

Mr. RAICHLE: The answer being the same, it came from the desk drawer, in your opinion?

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-19, are you able to state where that document was found?

A. The same thing should apply.

Q. What is that?

A. There isn't any marking at all, it's a memorandum to Mr. Nicht. It would have to come from his desk.

Q. With respect to P-68?

A. No, now this "Att" I identified as Mr. Nicht's handwriting and he has underscored "Eastern Color Printing Company." I should say that one should have been taken from the files.

Mr. RAICHLE: You don't know whether it was or not?

The WITNESS: No, I don't.

1291

By Mr. BERNSTEIN:

Q. Mrs. Lutz——

A. That is marked "Att. Eastern Color Printing Company."

Q. And what was the practice when a document was marked, "Att" in that fashion?

A. We would have a follow-up with Eastern Color Printing. This should have been attached to that file.

Q. Where was that kept?

A. In the general files.

Q. Is that the general files in Hearst or the general files of the Sales Department of King Features?

A. I would say the Sales Department of King Features.

Q. And did Mr. Nicht issue any—strike it out. Who issued—

Mr. RAICHLE: Does Your Honor have this?

The COURT: Yes, I have it. This is the one that says "I spent a few hours with Ham Moore," that is what you are talking about?

Mr. RAICHLE: That couldn't be admissible on any theory.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, with respect to the rules concerning the filing in the Sales Department office, as Mr. Raichle questioned you about, with respect to the rules concerning dictation and so forth, who made those rules?

Mr. RAICHLE: She said there were no rules.

The WITNESS: There weren't any rules. That was a procedure followed, either marked "file" or marked "attach follow-up." Mr. Nicht would do that.

Mr. RAICHLE: She has represented under oath that there were no rules.

By Mr. BERNSTEIN:

Q. Did anybody establish office practices with respect to the Sales Department of King Features during the period of time—

Mr. RAICHLE: I object to this. We have been all over this. She has told us, as best she could, what was done. I asked her specifically if she had seen any rules or regulations and she said no.

The COURT: I will let her answer this specific question finally. Will you read that back?

(Thereupon the Reporter read the last question.)

1293 Mr. RAICHLE: How can she say someone established a practice?

Mr. BERNSTEIN: I'll withdraw the question.

By Mr. BERNSTEIN:

Q. With respect to Exhibit 67, are you able to state whether that document was sent to the Sales Division files?

A. There is nothing on here to identify it other than the Pitman notes, which I transcribe as: "Attach whole of this to Greater Buffalo."

The COURT: You have to speak pretty well into the microphone or we cannot hear you.

The WITNESS: Yes, sir. The Pitman shorthand notes I read as: "Attach all of this to Greater Buffalo Press." They are my notes.

Mr. RAICHLE: You don't know when they were put on or by whom?

The WITNESS: No, I don't.

The COURT: I wish I had these to look at, I'm completely in the dark. I mean, the copy is all right. I don't know 1294 what you are talking about, I have never seen them before.

By Mr. BERNSTEIN:

Q. Showing you P-24, I ask you if you are able to state whether that came from the company's files?

A. Again there is nothing here that would indicate it came from the file.

Q. That document is the salesmen's bulletin; was there any practice with respect to filing salesmen's bulletins?

A. Yes, the original of the salesmen's bulletins are filed in a hard covered black book we have in the office. I don't know why Mr. Nicht would retain this original in his desk drawer. Copies are made of this bulletin and sent to the salesmen in the field and the men in the company. Why this was retained in his desk drawer, I don't know.

Q. You described the documents that had the word "memorandum" on the top as a memorandum to Mr. Nicht, himself; how did you describe it?

A. If they were memos to any individual, the individual's name would have appeared on them, they would not have been in the original form only.

1295 Q. What instructions did you receive when Mr. Nicht would begin dictating to you concerning the preparation of the memorandum, if any?

A. I am sorry, I don't understand the question.

Q. We have some memoranda there where Mr. Nicht dictated a memorandum to Mr. Greene?

A. That is an inter-office communication from one individual to another.

Q. When Mr. Nicht would begin dictating to you, what instructions, if any——

A. He didn't have to give me instructions if he said memorandum, that was enough, it was a memorandum from Mr. Nicht.

Q. He didn't describe it as a memorandum to Mr. Nicht?

A. He would say memorandum.

Q. If he wanted the memorandum to go to an individual what would he do?

A. Name the individual to whom it was to be sent.

Q. Did it seem odd to you at the time that he would tell you to take a memorandum? Did Mr. Nicht's——

A. I beg your pardon?

Mr. RAICHLE: I move to strike it out.

By Mr. BERNSTEIN:

1296 Q. Did Mr. Nicht's conduct seem odd to you at that time?

A. No, why should it?

The COURT: When you hear an objection, pause.

Mr. RAICHLE: I move to strike it out, whether it seemed odd or not.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Mr. Raichle asked you certain questions concerning Mr. Nicht's health and the practice of being unable to sleep, and dictating notes to himself. My question to you, Mrs. Lutz, is did you have any indication during any of the period of time you took dictation from him, did you have any indication from him concerning Mr. Nicht's eccentricity?

A. No, I never thought of Mr. Nicht as being eccentric.

Q. Did you form any impression concerning Mr. Nicht, concerning business, during this time you were with him?

A. No.

Q. Or his attention to business, concerning these after-hour notes and so forth?

A. No.

1297 Q. Mr. Raichle in some questions he put to you suggested there was no routine or pattern to when these notes were dictated, is that correct?

Mr. RAICHLE: She said what she said, it speaks for itself.

By Mr. BERNSTEIN:

Q. Mrs. Lutz?

A. I tried to establish a procedure that Mr. Nicht followed.

Q. What was that procedure?

A. I'm back to repeating myself again.

Mr. STEVENS: I object; repetitious.

Mr. BERNSTEIN: I withdraw the question.

The COURT: I have no clear recollection of any organized system of procedure by Mr. Nicht. I take it, Mrs. Lutz, when he was home, after a business day, sometimes he made notes of what he was thinking about?

The WITNESS: Yes.

The COURT: Sometimes he did not?

The WITNESS: Yes, that is correct.

The COURT: I think you said there were flurries of that once in a while and long lapses?

1298 The WITNESS: Yes.

The COURT: I think you are going to talk about phone calls perhaps, or visitors. If I understand Mr. Bernstein's questions; was there a routine, regular procedure about the time of recording such phone calls or visits?

The WITNESS: No. As the occasion arose, if Mr. Nicht wished to record the results of a visit or lunches, he didn't do it specifically in the morning or in the afternoon or the evening.

The COURT: Now, one of the material questions would be, would he put down a recollection of what was said at lunch, perhaps, several days later?

The WITNESS: He has done that.

The COURT: Now, when phone calls came in you said you or the other girl answered the phone?

The WITNESS: Yes.

The COURT: After that was accomplished and done, was there a routine, regular practice of recording that?

1299 The WITNESS: Not every conversation.

The COURT: When one was recorded was there a routine, regular practice of the time of that recollection of the phone call?

The WITNESS: I don't think so.

The COURT: All right. I don't know exactly if that is the question you are about to ask or not.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, you testified before concerning dictation in the morning and concerning dictation in the afternoon?

A. I said he was a very systematic man. He dictated, as a rule, from nine to eleven and then from eleven to twelve took care of anything on the agenda, and went to lunch from twelve to two, and returned and again dictating from three, three-thirty.

Q. With regard to the notes he made overnight, what can you tell us with respect to what period during the day those would be dictated?

A. That could have been dictated in the morning or afternoon.

Q. And with respect to telephone conversations—
1300 may I have the exhibits—

A. These notes he made at night were not that voluminous, to my way of thinking.

Q. Was that the routine or usual or unusual?

A. It wasn't usual; he had made notes that night.

Q. Invite your attention to Exhibit P-10, I invite your attention to the note attached to that document and ask you if you are able to identify the handwriting on that note?

Mr. MOORE: May we have the exhibit number?

Mr. STEVENS: We don't have the note, to my knowledge I have never seen it. I have never seen that, it was never attached to any copy we received either.

Mr. RAICHLE: I have never seen this. Who did the attaching? Does anybody know? You don't know?

Mr. BERNSTEIN: May I inquire of the witness? I will find out about it.

Mr. RAICHLE: I don't know what that word is. Well, show it to her.

By Mr. BERNSTEIN:

Q. Are you able to identify it?

1301 A. That is Mr. Nicht's handwriting.

Q. And was there any practice with respect to notes like that made by Mr. Nicht?

A. No, he probably jotted these down during a telephone conversation and dictated them, dictated the memorandum.

Mr. RAICHLE: This might not be important, but she said he probably jotted it down.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Do you recall any occasions when you observed Mr. Nicht jot down notations during a telephone conversation and then have it affixed to a document?

A. Well, I have seen him make notes, not necessarily attach it to the document after he dictated the memorandum to himself. He could have destroyed the penciled notes.

The COURT: That doesn't necessarily allude to the letter by its terms?

The WITNESS: No.

Mr. RAICHLE: No.

The COURT: In other words, that penciled note on the back doesn't, in its terms, allude to the typewritten letter?

1302 The WITNESS: Well, Mr. Bitner's name is in the typewritten memorandum and it also appears in Mr. Nicht's handwriting.

The COURT: What is the gismo at the bottom that looks like a hex sign?

The WITNESS: That is doodling. He put in a price on—blank—I can't read that word—that is the way I would like it. Then there is doodling there, and then Features at Utica.

The COURT: All right.

Mr. RAICHLE: Did he doodle at night, too?

By Mr. BERNSTEIN:

Q. Mrs. Lutz, you answered Mr. Raichle's question before on cross-examination by stating that you had never met Mr. Raichle before, is that correct?

A. No, I hadn't met Mr. Raichle before.

Q. Had Mr. Nicht discussed with you meeting Mr. Raichle?

Mr. RAICHLE: I never met the man in my life, as far as I can possibly recall.

Mr. BERNSTEIN: No further questions, Your Honor. At this time, Your Honor, the Government offers in evidence
1303 Exhibit P-10, as a memorandum made in the regular course of business—

Mr. RAICHLE: Shall I reserve my remarks until he has completed offering all of them, or take them seriatim?

The COURT: Here is one thing I am confronted with. I have never seen any of these exhibits up until today. I haven't had a set of copies. I would like to have a complete set of copies with the Court Exhibit numbers on them when this argument goes on. Some of those I have grave doubts about; others, I haven't read. Now, I want to let Mrs. Lutz go back to Manhattan, if she can, and I am going to reserve the time for the argument on these exhibits, but I don't want to have Mrs. Lutz called back again if we think we have to explore some more with her.

Mr. RAICHLE: I have no more questions.

Mr. BERNSTEIN: I have no further questions.

Mr. STEVENS: No questions.

1304 Mr. BERNSTEIN: I have no further need to question

Mrs. Lutz on the documents. If it meets with Your Honor's approval, I will reserve offering these documents in evidence and offer them later as we get into the—

The COURT: I want a set of copies to look at—I was going to do some homework—I haven't read most of those.

Mr. BERNSTEIN: The Government will rely on the foundation made by Mrs. Lutz without asking any further questions. If that doesn't suffice, there is no need to bring her back.

The COURT: We can release Mrs. Lutz?

Mr. BERNSTEIN: Yes.

Mr. RAICHLE: Yes.

Mr. STEVEN: Yes.

The COURT: I am going to recess. Before you leave—and I would like them soon—I would like a full set of those papers with the number of the exhibit here on them. Then in the

1305 morning, the first thing, we will get into the question of the propriety of these exhibits and the offer. I have a

little brief from Mr. Bernstein on these business records, I suppose you have got a copy of that?

Mr. STEVENS: Yes.

The COURT: I have got both those, your brief and Mr. Bernstein's, and if I have a complete set of these exhibits proposed and offered, I will be ready for you in the morning. I will retire, please let me have them, if you can, in about fifteen minutes. Have you a set?

Mr. BERNSTEIN: We will have to have one made.

Mr. STEVENS: I think we could make up a set of these, you were talking about the business records, the last batch?

Mr. BERNSTEIN: Your Honor is referring to all of the documents.

The COURT: All of the exhibits you offered as business records through Mrs. Lutz.

Mr. BERNSTEIN: Was Your Honor concentrating solely on these documents, not on the rest of the case?

1306 The COURT: Just these that are now currently up for passing on by me as to their being properly in evidence.

Mr. BERNSTEIN: We will do that immediately.

The COURT: We will adjourn until ten in the morning.

Mr. BERNSTEIN: Does Your Honor have any copies of the exhibits up there at the moment?

The COURT: Here are Exhibits 1 through 6.

Mr. MOORE: Those are in evidence.

The COURT: Here's Exhibit 9, which I have sustained the objection to presently. I have none of your original exhibits now. Give me a set of those, if you will, before I leave tonight, the ones you are now offering.

(Thereupon, the court was in recess at 4:25 p.m.)

1307 Proceedings of Wednesday, October 13, 1965, commencing at 10:00 a.m.)

The COURT: There is a little change here in my commitments for this week. I just learned that Al Pacini had an extremely serious heart attack.

Mr. RAICHLE: I am sorry.

The COURT: Yes, he was scheduled to go on with me tomorrow on a counterfeiting case. I shall declare a mistrial on that; anyway we couldn't go on. So I can give more time to this tomorrow. I hope that doesn't interrupt anyone's plans because I pretty much told everyone I couldn't.

Mr. RAICHLE: It is all right with us, we can go on tomorrow morning.

The COURT: All right, fine. We will go ahead and try to finish up your end of the case. I think it will be better if we can do it.

Mr. BERNSTEIN: I would prefer it. May I proceed or do you want to wait for Mr. Moore?

The COURT: Here he is now.

1308 Mr. BERNSTEIN: May it please the Court, at this time the Government will withdraw its offer of Exhibit

P-20, as an entry made in the regular course of business, and will offer that a bit later solely as a declaration of a co-conspirator. At this time it renews the offers in evidence of Exhibit P-10, as a memorandum made in the regular course of business. With respect to that document, Your Honor, the Government respectfully contends the witness's testimony yesterday laid the foundation for the admissibility of this document as an entry made in the regular course of business, in that she identified it as having been prepared by the man who was in charge of the particular Sales Division at the office in which this document was kept. In that office, if the Court please, there were approximately fifty people, about twenty clerical employees. The testimony was that it was the routine practice for this gentleman to make memoranda. The witness described it as a memorandum to himself, although the document appears headed "A memorandum." I would urge that this is in the nature of a memorandum to the files. While it is true a certain category of documents—for one reason or another, we can suggest several reasons but I don't think that is essential at this point—the head of the Sales Division prepared the memorandum that I would describe as a memorandum to the files, chose to file it in his own desk drawer and make no copies but kept it in his own personal possession. An examination of P-10 shows it reports a telephone conversation that he had the very morning of the dictation. It has a note attached to it which the Government respectfully contends the Court can infer would be the kind of notation that one would make while speaking on the phone and then, as the witness said, it was his practice to dictate twice a day, routinely, systematically, he would take from that, from the note of the conversation, and dictate a memorandum, and it is obvious from the nature of the document that he wanted to preserve this for his own use as head of this Sales Division, to keep a record of what had actually occurred, what had been told to him in that conversation. This differs in the case urged by counsel. Counsel asks the Court to rely on the case of Standard Oil of California against Moore, which was a private treble damage case, and in that case the Court held that the kind of inter-office communications that were there, reported conversations that salesmen reported they had heard other people say. This particular document, Exhibit

P-10, is a report of a conversation that the writer of the document had, he had personal knowledge of it. And I refer to the quotation on page four of the defendant's memorandum quoting from the record of the case. It says: "The probability of trustworthiness of memorandum and records made and maintained, as provided in Section 1732, lies in the fact that they are routine reflections of the day-to-day operations of the business in whose files the memoranda and reports are found." Then it cites the *Palmer v. Hoffman Case*, 318 U.S., Pages 113-114. "The matters which reflect the day-to-day operation of a commercial enterprise are those in which it is directly concerned as a participant. Illustrative of these are such matters—" and it then quotes illustrative matters. The Government contends that Exhibit P-10 is trustworthy under this rule. It reflects the day-to-day operation of the business. In this particular case it reflects a telephone conversation of the person who wrote it the day before.

In the *United Shoe Machinery Case*, 80 Fed. 2nd. Sup. 349, at page 354, the Court holds that under the business record rules, a document is admissible for the following three purposes: For the truth of any event of which the communicating employee had personal knowledge and which occurred within a reasonable time before he wrote it, which in the case of annual reports and most other documents would be one year. Here Exhibit P-10 meets that criteria. The communicating employee had personal knowledge and it recorded any event, and it may be offered for the truth of that event. It was written within a reasonable time, it was preserved to aid in the conduct of the business, and again I refer to the defendant's memorandum, page four, where it quotes from the *Standard Oil* case, paragraph 18: "It follows that a writing which does not pertain to a matter in which the business was a direct participant, but to some incident, circumstance or activity outside of that business, is not a memorandum or record of an act, transaction, occurrence or event within the meaning of the statute." The Government contends that this document, from its very nature, examination of it shows it was preserved to aid in the conduct of the business and it was concerning a matter in which the business was a direct participant.

The Court: I would like to ask you something, Mr. Bernstein. In your own memorandum, Item 2, you are citing an authority there. You recite as follows: "Letters and memoranda written by each of the defendants are admissible in evidence—" and this is the part I want to talk to you about—"once prima facie existence of a conspiracy engaged in by the defendant has been established by independent evidence." Now, let's assume that these exhibits that you are now offering do constitute proper memoranda and communications within certain rules of law. Where have you established, as you offer these, "once" it says, "prima facie existence of a conspiracy has been established?" Upon what do you rely that it has been established that these are pertinent to that case?

Mr. BERNSTEIN: I regret, Your Honor, that I created a confusion in that memoranda. The heading above item 2 should be "Declarations of a Co-Conspirator." It is the Government's contention that this particular—well, with respect to P-10, the Government doesn't make that contention at this time. The Government contends there are two bases for which memoranda may be admitted. One is, if it was memoranda kept in the regular course of business, meeting the test we have just been discussing, and if it is, then you needn't show that the conspiracy has been established by evidence aliunde. However, if there is a document—let's assume that it is a letter from one alleged co-conspirator to a third party; with respect to that document, if it hasn't been established that letter was an entry made in the regular course of business or, in other words, it was unusual that that letter be written, it was not a routine, systematic practice to make that kind of document; under those circumstances, that letter could be admitted as a declaration of a co-conspirator once there had been evidence of a conspiracy. It is the Government's contention that following the admission of these documents, and if the Court would prefer that order, the Government would be glad to do it—the Government's next item proposes to offer, through the deposition of Frank Nicht, testimony of the evidence of the conspiracy. Then it proposes—it could offer some of these documents made by Nicht as a declaration of a co-conspirator. The Government contends that the document is admissible on two grounds; one ground is that even if the con-

spiracy is not established the document is admitted for the truth of the event because it is an exception to the hearsay rule when memoranda of this character are made routinely and systematically, and in the normal course of business practice, and they may be received as evidence. The Court, by examining the documents, determines how much weight to give it, how much it wants to rely on it. But it is admissible as to the exception of the hearsay rule on the grounds that it is usually trustworthy to take documents that businessmen prepare and rely on and make 1317 their business decisions on, those kind of documents are trustworthy and are the kind of documents that are used to reflect and explain the motive and the intent of the writer. So at this time the Government offers in evidence P-10 under the Business Records Rule.

The COURT: Now, have you other exhibits in the same category?

Mr. BERNSTEIN: Yes, Your Honor. Do you want me to go through all of them?

The COURT: Yes.

Mr. BERNSTEIN: I wanted to offer it on the individual basis so that we wouldn't get the wholesaling Mr. Raichle was talking about. We get arguments as to each document. Whatever infirmity would apply to P-1 may not apply to P-10.

The COURT: It doesn't concern me what order this is done. If you suggest that each should be taken up one by one, I am perfectly willing to conform.

Mr. BERNSTEIN: I prefer to offer P-10.

The COURT: Approach P-10 then.

1318 Mr. RAICHLE: Your Honor, you have very much in mind the basic points. I respectfully submit, with due regard to Mr. Bernstein's learning, that he is woefully mistaken about the rule in conspiracy cases. Basic to the receipt of oral declarations of an alleged co-conspirator, and basic to the receipt of evidence of written declarations of co-conspirators, is the proposition that there must be independent proof of the fact of the conspiracy in sufficient quantity and probative value as to enable the Court to make an initial finding, perhaps not an announced finding or an ultimate finding, but a judicial finding in his own mind that there is proof, which, undenied and unexplained, would establish the fact of a conspiracy. That, as I

say, extends to oral declarations and to written declarations. It would be easy to illustrate. If Mr. Nicht was alleged by some

live witness to have said thus and so, the witness being
 1319 competent to testify on the subject, such testimony
 would not be admissible until the conspiracy had been
 established by independent evidence, to which I have referred,
 and to which the cases refer. Now then, to get to the written
 declarations, we take the same route, as I say. Then, basic to
 all of these documents, which are claimed to be declarations on
 the part of an alleged co-conspirator, the infirmity in counsel's
 proof is practically admitted by him. Let our recollections go
 back to yesterday when he first started to offer these documents.
 He said that he would then offer proof of a conspiracy. I submit
 he should have offered such proof before the documents are
 offered. Getting to the documents themselves, even if the basic
 requirement respecting independent proof of the conspiracy

had been satisfied, the documents on the basis of the
 1320 testimony of the good lady of yesterday are inadmissible.

I don't care whether we take them one by one or whole-
 sale, to use the word he borrowed from me. In the first place,
 there must be proof of rules or regulations or a recognized and
 generally followed system or practice designed for the purpose,
 put into operation by somebody in authority to make business
 record rules, business records admissible. The testimony is that
 in some desolatory fashion, sometimes at night, sometimes in
 the daytime, this man would make some memorandums, some-
 times in pencil, sometimes dictated, sometimes months would
 intervene in between; a practice not followed by others in the
 office and certainly not directed to be followed by anybody, and
 as the spirit moved him, he put in his desk drawer, for whatever
 reason, from time to time, some memoranda. Then, while
 1321 I am discussing Exhibit 10, let me point out an inter-
 esting and, I think, devastating circumstance. Where is
 that piece of paper, that little slip? Here is a slip of paper next
 to this P-10 and it says: "Bitner put in a price in—"—I
 can't read the next word; you remember the lady couldn't, and
 there is a little bit of doodling, and it says: "This is the way I
 would like it. Feature at Utica."—That is what he wrote down,
 if indeed he did, contemporaneously with the phone call. What
 follows, as I say is rather unusual. Apropos of the alleged tele-

phone conversation, apropos of the eleven words that he wrote down in pencil, if he did, he has expanded memorandums dated January 19, 1954; April 15, 1954; May 26, 1954; some of them run into three or four pages containing by actual count upwards of eighteen hundred words, a magnification of over one

1322 hundred times, and all predicated on this little piece of doodling that he was doing. Most of the memorandums—and I will get back to P-10—reflect mental operations on his part, mental operations imputed to the other person. We take P-10 and we find such statements as this: "Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages —" now then, it says in that little slip of paper: "That is the way I would like it." A reading of the little slip, written by this man in a comparatively high position, still subject to the orders of others, would suggest that he is reflecting his own statement, his own attitude. "Put a price"—whatever that word is—"that is the way I would like it." When you read the memorandum it got around to something where he said: "Koessler also told me that Bitner replied, 'That is the way I

1323 would like it.' " The memorandum is absolutely meaningless without some explanation that doesn't appear. It doesn't conform to the requirements, and rather than recite them all, I might state it does not conform to the basic requirements of the cases. The lady's testimony is fresh in Your Honor's mind, and on the basis of her testimony, and because there has been no foundation laid, and because of the absence of even prima facie proof, a scintilla of proof of conspiracy, on the grounds that the document itself does not conform and no basis has been laid in law or fact for its receipt, the business record rule has not been complied with, it was not the ordinary course of business, to distinguish it from the idiosyncrasies of this one man, to make documents like this, he is under no rule or regulation which required it, and for all those reasons I object to it.

1324 The COURT: There is some interesting language by Judge Sylvester Ryan in the Imperial Chemical Industries Case. Reading from page 512, 100 Fed. Sup., he is talking about this area and the memoranda made by co-conspirator. He said something to this effect: "In addition, a broad agreement to divide world-wide markets, such as is shown in this case,

existing for as early as 1897, cannot be a static one or else it would find itself ineffective due to changing world conditions and new and frequent development in a technical field." He goes on to a more important part, to me at least, and he said: "Revisions, alterations, adjustments and expansions to new and attractive areas were necessarily part of the conspiracy here proven and indeed at the very heart of the successful survival of the altered external factors. Accordingly, the steps taken by

each co-conspirator in suggesting alterations, preparing
1325 for conferences, reporting discussions among representatives of the co-conspirators concerning proposed alterations, planning new meaning to effectuate a joint purpose, all are in furtherance of the conspiracy." Now, what he does there is go on, as I read it, to a serious discussion as to whether the question is admissibility or weight given under all conditions.

Mr. RAICHLE: Could I cite, Your Honor, the Krulewitch Case; I'm sure you are familiar with it. There is a landmark case in which Judge Jackson points out the fact that a conspiracy is so often sought to be proved by documents and by declarations which are only admissible when a conspiracy has been otherwise established. You take Judge Ryan's language there, the declaration of a co-conspirator, how can you call someone a co-conspirator until there has been some proof of the conspiracy.

1326 The COURT: Thinking back to what I said to you, Mr. Bernstein, when we started discussing this, because, basically, that is the rule in criminal cases, that you must establish it by independent evidence and then the statements come into view. I wish you would tell me—when you talked before, you seemed to say these come in under a different rule, I didn't quite follow that.

Mr. BERNSTEIN: I regret that I have confused the issue. Let me try to straighten it out this way: Assume this were a check-passing case, and assume it was essential for the Government to establish as part of the issue that on January 3, 1954, Walter Koessler phoned Frank Nicht. Assume that was the fact that had to be established in a check-passing case between somebody who didn't know either one. Your Honor, the Govern-

ment contends under the Business Record Rule, with-
 1327 out establishing any conspiracy on the part of Nicht and
 the witness on the stand, or anybody else, this document
 with the foundation laid in this case could be offered as evi-
 dence there was a phone call on that day. It could further be
 offered as evidence as to the contents.

The COURT: Is that all you are offering P-10 for, to show
 there was a telephone conversation?

Mr. BERNSTEIN: And also the truth of the conversation, as-
 suming that conversation were in issue, because otherwise it
 would be hearsay, obviously it would be hearsay to offer the
 proof of that conversation. But supposing the substance of
 that conversation would be an issue, Frank Nicht is dead,
 supposing it had to be proven what the conversation was; it
 could be done under the Business Record Rule once you have
 shown this document was prepared in the regular course
 1328 of business, under the circumstances that it was done
 systematically, that is the end of that rule, period.
 There is another set of rules, another exception to the hearsay
 rule, and this is still a second exception. That is what Your
 Honor was referring to, this declaration of a co-conspirator.
 If we were offering it under the second exception—this is where
 I have caused the confusion—at that point the Government
 would first have to offer proof of the conspiracy, and it con-
 cedes it has not done that, and it proposes to do it as the next
 order of business. So it could either procedurally ask the Court
 to accept it now, subject to the foundation being later laid or
 reserve the offer of the documents at this time and put the
 other evidence in and then re-offer it under both grounds, as a
 declaration of a co-conspirator and a business record rule, but
 since the issue was made on the business record, and we
 1329 had the witness on the stand yesterday, the Government
 contends these documents may be admitted under the
 Business Record Rule even though there is no conspiracy
 established yet. That is the point that it urges at this time
 for Document P-10. Mr. Raichle concluded, from the testimony
 of the witness yesterday, that this memorandum, P-10, was
 done in a desolatory fashion, not systematically. My view of
 the evidence is opposite. I gathered from the evidence it was
 done systematically and routinely. The action of the rule Mr.

Raichle relies on stems from the fact that the relationship in that office was one where the man in charge of the office was establishing the practice and therefore it would be highly unlikely that he would issue written rules to himself as to what kind of documents he would dictate, what kind of memoranda

1330 he would keep. Now, with respect to the mental operations, insofar as that is reported on P-10. That goes to the weight the Court will afford to the document after reading it, not to its admissibility. The courts have held that documents that do record the opinions of the writer, and not only the events, generally will not be admitted unless it shows that the opinions are the kind of opinions that the man would make in his routine business judgments, and I think it would be strange to assume Hearst Corporation of King Features Syndicate would hire a man in this important position and pay the salary that it does and not rely on his ability to ascertain what he gleaned from his telephone conversation with Walter Koessler. So that he is qualified to make those kinds of opinions as to the conversations of Koessler. I did not follow

1331 the argument that the note attached to Exhibit P-10 intended to form the basis of other memorandum written at a later date or other times. I concluded, I respectfully submit, that the note attached to it merely reflects this was a note that served as a foundation for the preparation of P-10 alone.

The COURT: I think I'm going to do this: I'm going to listen to the argument on each one of these offered documents, and I am going to reserve decision on that offer during that argument in each instance unless I feel there is one or two that clearly are one way or the other, and have that on the record and accomplished so we can move along, and then we'll talk about the next step in your proof.

Mr. STEVENS: Could I say a word?

The COURT: Yes.

Mr. STEVENS: With reference to the objections to Exhibit P-10: According to my notes, and being fair with Mrs. Lutz, I'm trying to clarify exactly what was done with reference 1332 to memoranda of telephone conversation; her testimony concluded virtually with your questions addressed to her as to any regularity of practice in connection with telephone

conversations, and she said, if I recall it correctly, that there was no regularity about it, there was no routine about it. You asked her further was there any routine about the time when such memoranda as were dictated were in fact given to a secretary, with reference to the incident of the telephone calls and she said there was no regularity, no pattern, no established practice in that connection. The net result of that testimony, as I recorded it in my notes, there was no routine concerning recording telephone calls or conferences; that any record which was made could be made a period of several days after the event. Now, we, in discussing this document, it seemed to me get into

particulars which in some degree miss the point because the statute is called a Business Record Statute

and the fact is that this is not a business record because the statute requires that it be made in the course, a regular course of such business, and that it was the regular course of such business to make such memoranda; and the fact of the matter is that this was an idiosyncrasy of Mr. Nicht, and when he called his secretary in, whether it was the executive secretary or the assistant, and said, "Memorandum," those ladies understood that to him and to her that meant a single copy, not for the files of the company, but for his desk drawer. Now, in this desk drawer they were not segregated, as she described it, into files by topics; they reposed there, mere recordizations of notes for his purely personal use, and in no sense company files. I think that actually the inquiry with reference to

this document, and indeed all of the documents which carry the designation "memorandum," can stop right there, because, in fact, they are not business records.

The COURT: Well, I have that under consideration brought—I don't take it lightly—I have a much more serious consideration that it was, in a manner of speaking, based on this question of whether the prima facie case has to be established before these items may come in. I am aware of what you are talking about. I have not read any cases defining what regular course of business exactly means under all conditions. All right, go ahead.

Mr. BERNSTEIN: I would like to add one thing, Your Honor. These notes were not made for Mr. Nicht's personal use, for private venture or private gain, but made for his personal use

as the head of this Division, it was in his regular course of business of being head of the Division that he prepared these memoranda. With respect to the routineness, that the witness said there was no fixed time of the telephone conversations, she did say it was his routine practice to dictate twice a day; that the document itself indicates it was done early that day. Now, with respect to Exhibit P-11. P-11, Your Honor—

The COURT: I have a set here.

Mr. BERNSTEIN: Thank you. P-11, as Your Honor would note, is a document that the witness described as a routine interoffice communication, prepared from the head of the King Features Syndicate Division to his superior, who maintained an office in the same building, not in the same suite of offices, on another floor. If Your Honor will recall the witness's testimony, the word "readyprint"—I believe it is visible on the original, not on the copy—in the upper right-hand corner, in pencil, the word "readyprint," and the word "readyprint" underlined in the second line of the document. The witness testified that this was the practice of indicating how it was to be filed. So the Government suggests this indicates that was kept in the regular files of the company's business and the subject matter relates to a report to a superior of the events to enable business decisions to be made in the business, and the business was a direct participant in this item reported. It shows the motive, it shows the pattern of conducting business, and it is matter within the personal knowledge of the man who was making the report. That document is offered in evidence under the Business Record Rule.

Mr. RAICHLE: We object on all the grounds we have been urging to Exhibit 10. I would like to correct Mr. Bernstein.

The witness said when there was no notation on the face of the document or associated with the document it be filed in connection with the particular matter, that was nothing more than one of these memorandums to Mr. Nicht. In other words, it was Mr. Nicht's business in each instance, not the corporate business.

Mr. BERNSTEIN: With respect to that, the Government contends this is a circumstance that the Court would have to decide in viewing all the documents. Some of the other documents, in the same kind of handwriting, are notations which

indicate the file and the subject matter; and the Government contends that the Court can infer from that that these were kept in the regular files, whether kept initially in the desk drawer and subsequently filed, is another matter.

The COURT: I make the same ruling on that.

Mr. STEVENS: With reference to Exhibit 11, I think that we should point out that again, not commenting on the failure to have the prima facie case proven before the introduction of these, and addressing myself particularly to the Business Record Statute, this document, in what I would assume the Government would regard as the key paragraphs, certainly does not purport to state primarily factual matters. This is what he thinks, the writer, Mr. Nicht, should be done. And it is a written statement by him of some things he hopes would be done. He believes "we can gain still further by doing certain things." The second paragraph talks about shifting certain business, and "but I think it should be done." In other words, it is prospective, not factual. And as to P-11, this letter of April 15, 1954, there is no proof of its timeliness, of the relation between the preparation of this letter and the dates of the events which are referred to. Indeed, if one looked at Exhibit P-10 and again at P-11, it would be perfectly plain that there had to be a great lapse of time between some of the events which were recorded in the latter document so that it is hardly any impression of fresh recordation, it is really a subjective communication by this man on prospective matters which may have been proper for him to consider but it does not make it a business record.

The COURT: I am going to make the same ruling on these as I announced. I was thinking about this whole area of conspiracy, though, Mr. Bernstein, as I encountered it in the past. A simple way of speaking of it, as I recall it, that it is an alleged partnership in some illegal operation or some questionable operation within the law and, as I remember it, the whole foundation for allowing the declarations of one co-conspirator to be used against the other is that once you find the conspiracy, or illegal partnership, then each partner becomes the agent of the other in furtherance of the conspiracy, and then when one makes declarations in pursuance and furtherance of that partnership, that the law permits. Now, if we had independent evidence—which you concede now is

not here before me, of the illegal partnership, we would head face on into it, as to whether they are proper against the other. That is what gives me trouble. Reading again from Judge Ryan's opinion, he prefaces his statements—rather unusual statements—of alleged co-conspirators and what could be used, like plans for the future, and so forth. He still prefaces that commentary by a statement that, "We have found that a conspiracy has been so proven. The sole issue is whether the challenged statements are declarations in furtherance of the conspiracy. Because of the nature of the conspiracy and the participants, we conclude they are." Nevertheless, 1341 he doesn't skip over the basic requirement.

Mr. BERNSTEIN: Your Honor is right. The Government agrees with the statements that Your Honor made with that statement of the law. That is the Government's position, and I think with this procedure, if Your Honor reserves ruling on these documents, then the Government will proceed with weighing the foundation, through the deposition, for the evidence, and then what is troubling Your Honor the Government believes will be cleared up and the Government will then offer certain of these documents as declarations of co-conspirators under Judge Ryan's rule. The Government makes a technical point here, but ultimately we are going to come out at the same place.

The COURT: I have no argument with the way you are proceeding since there is no jury. I wondered why you chose 1342 to go at it this way in the light of your agreement.

Mr. BERNSTEIN: I'll explain that. Some of these documents—NEA isn't charged with having entered the conspiracy until later on, and while the Government contends that documents, declarations made by a co-conspirator prior to the joining of a subsequent conspirator, are nonetheless admissible to someone else joining. The Government contends—the reason why I proceeded in this way was to avoid that dispute or that question—it would be admissible against the NEA even if the conspiracy had not been proven against them initially.

The COURT: I wondered, that is all. You agree with me, this is a necessary foundation and ordinarily I would think the other evidence would come first. Well, gentlemen, I want to do something here. I just had a short look at Judge Ryan's

opinion in that Imperial Chemical Case and it is of interest to me. I would like to recess for a few minutes and read it now and we will go right back in a few minutes.

Mr. BERNSTEIN: May I invite Your Honor's attention, in that I.C.I. Case, to—

The COURT: Supposing you hand it in.

Mr. RAICHLE: Would Your Honor read the Appalachian Case and Krulewitch Case?

The COURT: That is a basic statement contained in what I said before, I want to see what Ryan said, particularly.

(Thereupon, the court was in recess at 10:55 a.m.)

(Proceedings resumed, pursuant to recess, commencing at 11:15 a.m.)

Mr. BERNSTEIN: If the Court Please, I will withhold the offer of further documents and at this time offer in evidence the deposition testimony taken from the deposition of Frank J. Nicht.

The COURT: Excuse me. I am contented that these documents do not constitute documents that are properly coming in here under the Business Rule, under 1732, and as such, I sustain the objection to them. Now, whether or not they can come in here as a declaration of a co-conspirator, in due course, I am not ruling now on that subject. I am going to now rule, so the people know where they are at, that these are not acceptable and will not be admitted as offered at this time as business records under, I believe, 1732 of the Code.

Mr. RAICHLE: That extends to the exhibit which he is presently offering?

The COURT: That is right.

Mr. RAICHLE: Will the Reporter record these numbers or are they all recorded, I guess they are, the batch you offered yesterday afternoon.

Mr. BERNSTEIN: With respect to the deposition, page 66, line 25—

The COURT: Were these original depositions filed with the Court? I don't have any. If there is one, I would like one.

Mr. RAICHLE: I don't know whether they were or not, Your Honor.

Mr. BERNSTEIN: I am sure they must have been.

The COURT: There is no extra one, I take it? Well, go ahead. Give me the date, who is examining and who is being examined?

Mr. BERNSTEIN: This is the deposition of Frank J. Nicht, a Director of the Hearst Corporation, Vice-President and General Sales Manager of King Features Syndicate Division, taken by the plaintiff on March 20, 1961. The record shows Mr. Nicht is now deceased. He is being examined by Mr. Feldman on behalf of the Government. He was asked this question:

"Q. Do you know whether or not King Features Syndicate stopped soliciting the Waterloo run because of any determination made by King Features Syndicate?

"A. We didn't want it very badly because it was a six-page run.

1346 "Q. I just want to know whether a determination was made by King not to solicit the business?

"A. Yes.

"Q. Was this determination conveyed to the salesman or the person who had solicited the business for King?

"A. Undoubtedly.

"Q. Did this ceasing or failing to solicit the business take place after the telephone conversation allegedly reported in Plaintiff's Exhibit 3?

"A. I think so.

"Q. Referring now to Plaintiff's Exhibit 3, can you recall the substance of the conversation you had with Mr. Walter Koessler on or about January 14, 1954?

"A. This is self-explanatory.

"Q. I want to know whether or not that helps refresh your memory?

"A. It brings some of it back, yes.

"Q. Will you tell us the substance of that conversation?

"A. The substance of it?

"Q. That's right, according to your present recollection?

"A. It has to do with Waterloo, the Waterloo run.

1347 "Q. What was said by Mr. Koessler and what was said by you in regard to the Waterloo run?

"A. I don't remember that.

"Q. You said——"

The COURT: Excuse me, Mr. Bernstein, at this moment that means nothing to me, the Waterloo Run. I don't think there would be any objection to you telling me what is being hit at at this point.

Mr. BERNSTEIN: That was the reason why I wanted to put the documents in.

The COURT: I am sure there will be no objection if you describe it. Let me understand what you are talking about.

Mr. BERNSTEIN: The Waterloo Run—it is the Government contention that—and this deposition will prove—there was an agreement between Greater Buffalo and King that one of them would get the Waterloo Run, which is a Waterloo newspaper, and another would get Binghamton and Utica, another
1348 one—

The COURT: All right, I understand. You mean the Waterloo, New York, newspaper?

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: Waterloo, Iowa.

Mr. BERNSTEIN: Iowa.

"Q. You said that the conversation had to do with that run. What was said?

"A. I can't remember the conversation.

"Q. I don't want the exact words. I merely want the substance.

"A. The substance was that we did nothing further.

"Q. You are telling me the conclusion now. I want to know the substance of the words exchanged between you and Mr. Koessler."

Mr. RAICHLE: I object to the next answer as not responsive. This must be difficult for Your Honor without—

The COURT: I have sent the clerk to see if we have the original here. I have no notion of what the next question is.

Mr. RAICHLE: The next question is: "I want to know the substance of the words exchanged between you and
1349 Mr. Koessler." And the answer relates to something that was done rather than something that was said.

The COURT: Of course, if that were live testimony before me it would be objectionable.

Mr. BERNSTEIN: That would be objectionable as to form. The objection was not made as to form.

The COURT: It is not responsive. He wants to know the substance of the words exchanged between them, it says: "We laid off." That was the end result, I suppose they desisted. The substance of the words could have been something like, "I said we will get out of your way," or words to that effect.

Mr. RAICHLE: Previously he read the statement but they didn't want the thing.

Mr. BERNSTEIN: The point is, Your Honor, that in the taking of a deposition, the reason for the rule that objections going to form is that——

The COURT: That is not form, Mr. Bernstein, to my mind.

Mr. BERNSTEIN: If the motion were made to strike
1350 at that time, the interrogator would have had the opportunity to rephrase that question or ask another.

The COURT: Most of these depositions are couched, they reserve objections. I assume these were.

Mr. BERNSTEIN: As to the competency, not as to the form.

The COURT: I sustain the objection to that. In the first place, that leaves it purely a matter of conjecture with me as to what was intended and what was asked and what were the words in substance that were said. That is what a jury is supposed to do, find out what is meant by reasonable words. Sustained.

Mr. BERNSTEIN: Yes, Your Honor.

"Q. I take it then, and you tell me whether or not I am correct, that during the course of that conversation both you and Mr. Koessler discussed King Features Syndicate laying off
1351 or staying away from the Waterloo Run; is that what you are driving at?

"A. Yes, sir.

"Q. Is there any question in your mind now that that is the substance of the conversation you had with Mr. Koessler on or about January 14, 1954?

"A. That's right.

"Q. No question at all about it?

"A. No."

Now, on page 70—on page 48, rather, line 12:

"Q. Referring to the period now on or about January 4, 1954, do you know whether or not you had any telephone conversations with Mr. Walter Koessler in regard to any specific newspaper account?

"A. I don't remember.

"Q. I show you Plaintiff's Exhibit 2——"

"I digress for a moment to point out that Exhibit 2 is P-10 offered for identification—and ask you whether this
1352 refreshes your memory as to whether or not you had any telephone conversation?

"A. Yes, sir, I remember this. This refreshes me."

Now I propose to skip to page 50, unless there is an objection.

Mr. RAICHLE: Go ahead.

Mr. BERNSTEIN: Line 3:

"Q. Will you tell us now the substance of the telephone conversation you had with Mr. Koessler on or about January 4, 1954?

"A. That concerned the printing of the Utica and Binghamton runs.

"Q. What was discussed between you and Mr. Koessler in that telephone conversation in regard to those two runs?

"A. We wanted both of them.

"Q. When you say 'we,' you mean King Features Syndicate?

"A. Yes.

"Q. Who was servicing those runs at that particular time?

"A. My recollection is that they were printed in 1353 Rochester, which was the headquarters of the Gannett people.

"Q. In other words, the Gannett people themselves printed those two runs?

"A. Yes, plus their own in Rochester, I believe.

"Q. What was the substance of the conversation between you and Mr. Koessler regarding those two runs?

"A. That Rochester Printing Plant of the Gannett people was abandoned; therefore, it would be necessary for them to farm out the printing of the Utica and Binghamton runs.

"Q. What did you speak on in regard to that with Mr. Koessler?

"A. We wanted both of them.

"Q. When you say 'we,' you mean King?

"A. King.

"Q. What did Mr. Koessler indicate to you at the time, if anything?

"A. Well, he thought we could arrange it, we could fix it up.

"Q. Fix it up in what way, that King Features could have both runs?

"A. No. He would take one and we would take the other.

"Q. Was that discussed during the telephone conversation?

"A. Yes, sir."

I propose to skip to page 52, line 23.

Mr. RAICHLE: Wait a minute, I think on 52 you ought to read the question on line 10 or 11.

Mr. BERNSTEIN: Line 11:

"Q. I want to know only as to the conversations you had with Mr. Koessler. Never mind what happened after that. During the end or during the middle of the conversation you had with Mr. Koessler, what did he say, summarizing it, and what did you say, summarizing your previous part of the conversation with him?

"A. I can't remember that. I can't remember that.

"Q. When you hung up the phone, what did you know Mr. Koessler's thoughts to be on the basis of what he told you in regard to those two runs?"

Mr. RAICHLE: There was an objection.

Mr. BERNSTEIN: Leave out that question. Line 23:

1355 "Q. Putting aside the telephone conversation for the moment, what, if anything, happened thereafter in regard to the service of these two runs?

"A. King Features Syndicate secured the printing of the Binghamton run; Mr. Koessler got the printing of the Utica run."

I skip now to line 15.

Mr. RAICHLE: Wait just a second. I think you ought to read the next question.

Mr. BERNSTEIN: Line 5:

"Q. Are there any other accounts that you recall now ever having spoke to Mr. Koessler about?

"A. I can't recollect them.

"Q. Referring to Plaintiff's Exhibit 1 and the reference therein to a so-called Waterloo run, who, in or about 1954, was servicing this run?

"A. I don't remember that.

"Q. Do you know whether Greater Buffalo was servicing the run at that time?

"A. I don't know, no.

"Q. Do you recall whether or not you ever had any discussion with any color comic printer in regard to this Waterloo
1356 run?

"A. Yes, sir.

"Q. Who was the color comic printer?

"A. Greater Buffalo.

"Q. With whom at Greater Buffalo did you discuss this Waterloo run?

"A. Mr. Koessler.

"Q. Do you recall whether that discussion took place in written communications or whether it was during telephone or personal conversations with Mr. Koessler?

"A. I don't remember. I think it was phone.

"Q. Are you able to state now, though, that you did have such discussions with Mr. Walter Koessler?

"A. Yes, sir.

"Q. Following the discussions with Mr. Walter Koessler, what happened in regard to the color comic supplements printing of the Waterloo run?

"A. He obtained it.

"Q. Do you know whether or not King Features Syndicate ever received any remuneration in regard to that run?

"A. Yes, sir.

"Q. What was that remuneration?

"A. I don't remember the amount. It was a commission involved.

1357 "Q. When you say 'commission involved,' who paid the commission?

"A. Greater Buffalo Press.

"Q. Do you know what the amount was?

"A. No, sir.

"Q. I show you Plaintiff's Exhibit 1 and ask you whether in reading the next to the last paragraph that refreshes your memory as to the amount paid?

"A. Yes, sir.

"Q. What was that amount, sir?

"A. \$50 a week."

The COURT: That is not our exhibit?

Mr. BERNSTEIN: No, sir, that was an exhibit in the deposition.

The COURT: I don't want to interrupt, maybe we can get it later.

Mr. BERNSTEIN: Yes, it is, Your Honor, one of ours. What is Document 41?

The COURT: We will go back to it, Mr. Bernstein.

Mr. STEVENS: Isn't it 116?

Mr. BERNSTEIN: Document 116.

Mr. STEVENS: P-13.

Mr. BERNSTEIN: Yes it is P-13, Your Honor.

1358 The COURT: All right.

Mr. BERNSTEIN: Line 4.

"Q. I believe you stated that Greater Buffalo paid that to King Features. Is that correct, sir?

"A. Yes, sir.

"Q. Do you recall how that was paid, by check or in any other form?

"A. I wouldn't know. The Auditing Department would know that.

"Q. Do you know whether King Features still receives that amount.

"A. I think so.

"Q. Do you recall when that amount, the \$50, was first paid to King Features Syndicate?

"A. I don't remember."

I now read from deposition, page 128, line 12:

"Q. Directing your attention, Mr. Nicht, to the testimony you gave last Monday, I would like to know whether you recall testifying that in or about 1954 you made deals or arrangements with Mr. Koessler of Greater Buffalo Press in regard to newspaper runs situated at Waterloo, Iowa, Utica and Binghamton, New York. Do you recall so testifying?

"A. Yes.

"Q. I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those that you testified about on Monday?

"A. Yes.

"Q. What arrangement, if any, was that, sir?"

Mr. RAICHLE: Excuse me, I move to strike out the question and answer there on page 128: "Directing your attention, Mr. Nicht, to the testimony you gave last Monday, I would like to know whether you recall testifying that in or about 1954 you made deals or arrangements;" we have had the testimony in detail from Mr. Nicht, and to characterize them later as deals or arrangements adds nothing but confusion. The testimony is in. It would be as if a live witness were on the stand and he testified in some detail yesterday, and I said today, "Do you remember testifying about making deals and arrangements; did you make any other deals or arrangements?" If the testimony does not rise to the dignity or degree of a deal or an arrangement, this question and answer doesn't make it so.

The COURT: There is an objection here. I suppose you might have some basis for it, but it is not important to your continuing examination?

Mr. RAICHLE: No.

The COURT: Start out with: "I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those you testified about on Monday." Start there. You see, Mr. Raichle didn't like the word "arrangements" or "deals." I wouldn't make anything of it, but it does characterize it in the fashion that before a jury it might have some weight. You start at line 20, if you will.

Mr. BERNSTEIN: Well, excuse me, Your Honor, the 1361 purpose of it—

The COURT: All right, there is an objection to that. Overruled. Go ahead.

Mr. RAICHLE: In the light of Your Honor's statement, I will withdraw the objection.

The COURT: I make nothing of the use of the word "deal" or "arrangement." I know what was said.

Mr. BERNSTEIN: Line 20:

"Q. I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those that you testified about on Monday?

"A. Yes, sir.

"Q. What arrangement, if any, was that, sir?

"A. Involving Lufkin, Texas.

"Q. What was the specific arrangement?

"A. Greater Buffalo Press was about to open a new printing plant in Lufkin, and we agreed—Mr. Koessler wanted us to give that plant as much volume as we could, so we arranged to transfer some of our runs when the plant opened, and that was about it."

Mr. RAICHLE: Would you mind telling His Honor 1362 what year that was?

Mr. BERNSTEIN: Can we put the document in evidence? It all would have been explained. I am going to proceed in presenting this proof. Why can't—

Mr. RAICHLE: Be forthright about it, please, once, once.

Mr. BERNSTEIN: I'm being forthright all the time, Mr. Raichle.

Mr. RAICHLE: Let me just show Your Honor what is going on here.

Mr. BERNSTEIN: I am being asked a question as to the year when I am trying to concentrate on the presentation of the evidence. Any questions thrown at me in a cross-examining form, I can't answer at that moment.

Mr. RAICHLE: After we acquired International Color Printing, the situation was different.

Mr. BERNSTEIN: May I proceed?

Mr. RAICHLE: May Your Honor know the year he is talking about?

Mr. BERNSTEIN: May I proceed?

The COURT: Go ahead.

1363 Mr. BERNSTEIN: I am reading from page 129, line 3:

"Q. What was the specific arrangement?

"A. Greater Buffalo Press was about to open a new printing plant in Lufkin, and we agreed—Mr. Koessler wanted us to give that plant as much volume as we could, so we arranged to transfer some of our runs when the plant opened, and that was about it.

"Q. Was there any arrangement in regard to price?

"A. Yes. On runs which—that is, some of our runs were to be transferred at a certain contract rate, but he agreed to give the Syndicate a cut of fifty cents per thousand on some of his existing business.

"Q. When you say 'existing,' you mean existing at the time prior to Lufkin opening up; is that right, sir?

"A. Yes, sir.

"Q. Did you thereafter at any time get fifty cents pursuant to that agreement?

"A. Not on his business, no.

"Q. You never got that at all?

"A. No.

"Q. Did you get it on the other business?

"A. On some other business.

1364 "Q. Were there any other deals with Mr. Koessler besides Lufkin, Texas?

"A. I can't think of any offhand, without a little—

"Q. Was there—"

The COURT: Excuse me, now we have been talking about 1954. Does this purport to be in that year, this Lufkin arrangement?

Mr. BERNSTEIN: The Government contends, and the documents would have given—

The COURT: What I am talking about this; talking about 1954, then it says Koessler was about to open a plant in Lufkin, "We agreed," when was that?

Mr. BERNSTEIN: The Government contends there were conversations with Koessler concerning the opening of a Lufkin Plant long before the Lufkin Plant opened and before Greater Buffalo acquired International. Those conversations continued even after Greater Buffalo acquired International, and continued up through the opening of the Lufkin Plant.

1365 The COURT: All right.

Mr. RAICHLE: I don't think he answered Your Honor's question.

The COURT: I wanted to know two things; when did Lufkin open?

Mr. FELDMAN: 1958.

Mr. BERNSTEIN: 1958, and this was referring to an arrangement or understanding long before 1958.

The COURT: You have other proof of that?

Mr. BERNSTEIN: Yes, Your Honor. Page 130, line 2:

"Q. Was there any other arrangement or understanding about anything?

"A. Well, we were to leave each other pretty much alone on our respective business."

Mr. RAICHLE: I move to strike that out, it is not responsive.

The COURT: Overruled.

Mr. BERNSTEIN: Line 6:

"Q. By that you mean existing accounts at that time?

"A. That was existing accounts, yes."

1366 Mr. BERNSTEIN: The Government now offers Exhibit P-10, as a declaration of a co-conspirator, P-10 being the document referred to by Mr. Nicht in his testimony.

Mr. RAICHLE: I renew my objection upon all the grounds I have urged before and point out to Your Honor that there is not now the slightest evidence of a conspiracy of any kind or character. There is no proof of wrongdoing. Counsel has sought, unsuccessfully, I submit, to wrest excerpts out of context and to suggest there was some agreement or arrangement with respect to two or three small runs out of the hundreds, possibly thousands of newspapers in this country back in 1954, and that that constitutes some kind of a conspiracy. Certainly not the one charged in the Complaint. More certainly not the one urged in his opening nor in any one of those he has put forward

1367 from time to time during the pendency of this lawsuit.

Now, the confusion with respect to dates ought to be resolved. It is important. After Greater Buffalo Press acquired International Printing Company, of course, International Printing Company was still printing for Hearst. Hearst then had no printing facilities of its own. Hearst was selling features and was selling printing. International Color, and on occasion Greater Buffalo through its Lufkin Plant, were printing for Hearst. To talk in terms of deals, to talk in terms of commissions, when you consider sales being made, is no evidence of any conspiracy. I just can't urge it any stronger than I do. There isn't any proof of a conspiracy. He hasn't made a prima facie case. What does he say the conspiracy was to do? Have in mind

1368 that here are thousands of newspapers, many hundreds at any rate, in the United States, all over the United States, that all he has offered here is the fact that when the Gannett paper in Rochester ceased to do their own color printing, and Utica and Binghamton, Koessler got one and Hearst got the other, Hearst got the other because the plant in Binghamton is within a comparatively few miles of Wilkes-Barre, and the plant in Utica is within a comparatively few miles of Buffalo. A logical happening with nothing venal concerning it. Waterloo, Ohio, he read, perhaps inadvertently, from his point of view at the start, where King said he didn't want it, or Nicht said he didn't want it because it was six runs instead of four or something like that, Koessler got the business, we laid off. Not by arrangement with Koessler to lay off but he laid off for something he didn't want. Does that make, 1369 I ask rhetorically, even a prima facie conspiracy to restrain trade, monopolize, to do something wrong? Why, it seems almost frivolous.

The COURT: Is this all the conversation that you claim existed between these principals, Nicht and Koessler?

Mr. BERNSTEIN: The Government contends that this evidence—this is all the deposition evidence that the Government proposes to offer.

The COURT: I will reserve decision on your offer on P-10 until I read what has been brought in. Although it seems to me—is this the evidence of the conspiracy, all the evidence, except as supported perhaps by P-10, if it were to come in?

Mr. BERNSTEIN: It is supported by all the documents. The point is, this testimony—there is evidence in the case already

that this period of time Greater Buffalo and King were competitors in the sale of printing color comic supplements; at

this period of time they were competing for Binghamton 1370 and Utica, which just came on the market, also for Waterloo, so they made an arrangement, you take Binghamton, I'll take Utica, and that is the illegal agreement which constitutes a Section 1 violation. They then, with respect to Waterloo, Iowa—Nicht said he didn't want the business, he took \$50 a week thereafter for giving the business to Koessler.

The COURT: I thought there was some hint, a least, in this case—maybe at the openings—that there was still some work done by King Syndicate in servicing these accounts?

Mr. BERNSTEIN: No, that statement was made by Mr. Stevens on behalf of NEA. This isn't the same type of thing. Your Honor, this is the type of arrangement—

The COURT: You contend it's a flat kickback?

Mr. BERNSTEIN: A flat kickback, Your Honor, is the Government's contention, and it supports that contention 1371 with these facts: King, at that period of time, was having its printing done exclusively by International, which was not owned by Greater Buffalo then. Your Honor can see from this deposition that Mr. Nicht wasn't a willing witness; it took a lot of questions to draw out these facts. He, euphemistically, characterized it as a commission, but the fact of the matter was that he received \$50 because Greater Buffalo got the printing account and he didn't get it, and he didn't do the printing in International. Now, the evidence that I have just read in the deposition shows—this is the Government's contention—starting out with those three newspapers, the parties then enlarged, the parties enlarged to the point where they said, "We will pretty much leave each other's customers alone." This is not at a period of time when Greater 1372 Buffalo owns International; this is before Greater Buffalo owns International, they are competitors. The competitors agree they are not going to compete for each other's existing accounts; "We are going to leave each other pretty much alone." At that point of time they are engaged in a conspiracy, a continuing conspiracy to eliminate competition among themselves for all their existing newspaper accounts. The evidence with respect to Lufkin; it is the Government's contention, and other evidence will show, that as part of the transaction, for the acquisition of International, part of the

continuing arrangement, as part of the further arrangement, King would be the exclusive sales agent for Greater Buffalo. Greater Buffalo would be the printer as part of that arrangement. The question of opening Lufkin came into consideration.

They were potential competitors in the South for business there. It is the Government's contention that had

1373 Greater Buffalo had not acquired International, steps were being taken, efforts were being taken to counteract the competition Greater Buffalo was going to offer in Lufkin through International opening a plant in Sylacauga. The arrangement was that Greater Buffalo would transfer the runs to Lufkin, permit Greater Buffalo to open the Lufkin Plant, permit it to acquire International, and thereby the Sylacauga Plant, and the competition between them would be eliminated, with King operating as the sales agent, and Greater Buffalo operating as the printer. Now, it is the Government's contention that on these declarations of a co-conspirator, and the order of proof is entirely up to the Court, it is within the discretion of the Court, but here we have a case without a jury, and the

Government's contention is that you can't prove the
1374 entire conspiracy all at one time, you have to do it in stages. We have made a prima facie showing that as of 1955, prior to the acquisition of International, King and Greater Buffalo had been engaged in a conspiracy to eliminate competition for a specific customer or customers and to leave each other pretty much alone over-all. Exhibit P-10 is offered as a declaration of a co-conspirator for the sole purpose of establishing or confirming the testimony and to explain the testimony of Mr. Nicht, who referred to this document and said that it refreshed his recollection, and to make the record complete and explain some of the background circumstances this document is offered in evidence.

The COURT: I am not presently satisfied this is the
1374 time to receive that as a declaration of a co-conspirator.

I am going to reserve decision on it. I am not satisfied;
1375 I want to think over all the things you said and the testimony that you have read. I will pass on that.

Mr. STEVENS: May the record show we have an objection, and adopt Mr. Raichle's argument?

The COURT: Yes.

Mr. BERNSTEIN: I will read from the first paragraph of Exhibit 10, which will either be in evidence or as an offer of proof.

The COURT: You don't have to do that; I will either receive it or not. You want to take the part that you consider—

Mr. BERNSTEIN: Yes. "January 4, 1954; memorandum prepared by Frank J. Nicht: 'Walter Koessler phoned me early this morning from Buffalo. He told me he had seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica. At the same time he told me he discouraged Bitner from having Greater Buffalo print the Binghamton press run, saying that KFS could handle that better than he could. Koessler told me that Bitner replied, "That's 1376 the way I would like it."'"

Mr. RAICHLE: Could I make an observation there? Koessler is seeking a new customer and he knows the fact to be that the freight rate of the transportation charge from Wilkes-Barre to Binghamton is negligible, whereas to Buffalo it would be substantial. He encourages the customer, in the customer's interest, to take his Binghamton printing from the Wilkes-Barre Plant, he is developing goodwill. I mean, really, you fellows see something sinister in everything that happened. An Indian behind every tree.

The COURT: Of course, the Government contends, from what I heard Mr. Bernstein say, that one isolated thing standing alone might not constitute anything sinister, but he expects, as

I view it from what he said, to pyramid this into a bigger 1377 thing. But right now, on what I have heard, I do not consider that the time has come for me to receive P-10 as a declaration of a co-conspirator, and I will reserve decision on that offer.

Mr. BERNSTEIN: Very well, Your Honor.

The COURT: You may offer it again at a proper time, whenever you wish.

Mr. RAICHLE: He offered the document, and as Your Honor said, you are going to reserve on it. I don't think he should read into the record portions of them as if they were in evidence.

The COURT: I take it that you are trying to make a trim record here, that is the purpose of what this is for?

Mr. BERNSTEIN: That is right.

The COURT: You are taking that part of it that you want to make some note of. That would normally be the subject of a brief.

Mr. BERNSTEIN: This is an offer of proof.

Mr. RAICHLE: He identifies the document and offers it; why do we have to pay for having it in the record?

Mr. BERNSTEIN: It is done as an order of proof. I understand, Your Honor, there is going to be a request for an adjournment in this matter and by having it in the record in this fashion, Your Honor will be able to review the transcript and ascertain——

Mr. RAICHLE: Nonsense; I object to this.

The COURT: Well, I think it would be better practice if you offered the document and then if you want to say, "We offer it for paragraph one," or whatever you wish to say, you may do so. The whole document comes in here. I don't think you have to read it into the record.

Mr. BERNSTEIN: Very well, Your Honor. I offer P-11, Your Honor.

The COURT: Same ruling.

Mr. BERNSTEIN: Would Your Honor care to look at the document so that the Court could follow the portion that the Government contends?

Mr. RAICHLE: I object to each document on all the grounds we have urged.

Mr. BERNSTEIN: The Government offers P-11 for the first two paragraphs, and particularly for the next to the last paragraph, and the Government contends that this is an explanation of the testimony of Mr. Nicht. This was prepared by Mr. Nicht. In that paragraph he explains it: "Speaking of Greater Buffalo Press, here are a couple of ways in which our cooperation is worked out."

Mr. RAICHLE: Now he is reading.

Mr. BERNSTEIN: This is the paragraph I am inviting your attention to.

The COURT: You are not offering this as a declaration of a co-conspirator?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: You said it was offered as an explanation for his testimony.

Mr. BERNSTEIN: Offered as a business record.

The COURT: I have ruled on it as a business record, there isn't such a thing in this case. I have ruled this out as a business record under 1732. It either comes in as a declaration of 1380 a co-conspirator or on some other grounds I haven't heard of.

Mr. BERNSTEIN: It is being offered as a declaration of a co-conspirator; it is also being offered as an explanation of the testimony of Mr. Nicht. With respect to that, Your Honor—

The COURT: I don't understand what you mean by that. Mr. Bernstein. Since when do you put in an exhibit to explain the testimony of a witness?

Mr. BERNSTEIN: Well, I'm relying on the decision in the United Shoe Machinery Case 80 Fed. 2nd Sup. 349 at page 355, where Judge Wosanski was referring to the business record rule, and he makes this statement: "The three preceding sections of this opinion have assumed that the hearsay rule is applicable to civil antitrust suits and have shown how far the exhibits would be receivable even if that rule, with its modern exceptions, were applied. But in a civil antitrust suit in which the Government can secure against a defendant at most 1381 an injunction or order, without monetary damages, the trial Judge is not required to exclude every type of hearsay evidence which would be excluded in other types of cases. While the Supreme Court seems never to have stated that doctrine in those words, the doctrine is implied in what that Court has actually done. It is required to achieve consistency in the application of the antitrust laws by the District Court and by the Federal Trade Commission, and it is essential if the task of finding the facts in governmental civil antitrust proceedings is not hereafter to be taken away entirely from Judges and entrusted exclusively to administrative agencies. As far as this Court is aware, the Supreme Court has never either reversed or criticized a Trial Court for admitting hearsay evidence in a civil antitrust case tried without a jury. In all Federal antitrust cases do receive, though perhaps on 1382 grounds that would be indefensible in a simple tort or contract case, the intra-mural communications passing between agents of the same corporation." This document is offered on that basis. It is also offered on the authority of—

Mr. STEVENS: When you say "that basis," you mean a business record, don't you?

Mr. BERNSTEIN: Judge Wosanski wasn't referring to the business record rule on that case; he was referring to the discre-

tion of the Court to receive hearsay evidence in the form of documents and give it what weight—

The COURT: I will exercise my discretion. I decline to receive it now and reserve decision on it. It has been offered and I will consider it in the light of the testimony before me now. I am going to consider it purely on the question of whether it now constitutes the admissions of a co-conspirator, not on the looser grounds that may be talked about in that case.

Mr. BERNSTEIN: It is also being offered for the purpose of showing the intent or motive of Mr. Nicht in his conversation with Mr. Koessler, the document having been identified as a document prepared—

The COURT: His motive and intent as a co-conspirator, you mean?

Mr. BERNSTEIN: Motive and intent, yes, Your Honor.

The COURT: Then I'm still back to the problem; I am not ready to receive that document on the grounds that you have established a prima facie conspiracy, and if you are using it to establish it, I think it is clearly objectionable. It has been offered. I will reserve decision on it. I will probably give you an opportunity to give me a brief on all these offers, each side, if you wish, although I heard everything about it.

Mr. BERNSTEIN: The Government now offers in evidence P-14 as a declaration of a co-conspirator.

Mr. RAICHLE: Same objection.

Mr. BERNSTEIN: There is the original, Your Honor.

Mr. STEVENS: Same objection; I join Mr. Raichle.

Mr. BERNSTEIN: The Government offers it for the first paragraph, which begins: "I am looking forward to talking with you,—" and the third paragraph, which begins: "Lacking certain support which I think should have been given to us,—" it is offered for those two paragraphs.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government offers in evidence Exhibit P-12, and offers that with respect to the first four paragraphs. If you will note, Your Honor, there the document refers to April 21, 1954, and refers to a conversation concerning Lufkin, Texas.

Mr. STEVENS: Objections for both defendants.

The COURT: Same ruling on this.

Mr. BERNSTEIN: The Government also offers it for the next to the last paragraph on the first page.

1385 Mr. STEVENS: Objection for both defendants.

The COURT: Same ruling on that. Do you contend that King was printing the New Orleans Times Picayune, the Oklahoma City Oklahoman & Times and the Memphis Press Scimitar, and were disturbed about Koessler coming into Lufkin, is that your contention?

Mr. BERNSTEIN: The Government contends that King was very much concerned about losing competition in the South, if Greater Buffalo would open up a Lufkin Plant and King didn't have a plant in the South.

The COURT: You said "losing competition?"

Mr. BERNSTEIN: No; losing business. King was very much——

The COURT: Did they have that business, did King have the New Orleans Times Picayune and the Oklahoma City Oklahoman & Times, and the Memphis Press Scimitar?

Mr. BERNSTEIN: I don't know whether it did or not.

1386 It is the Government's claim, whether it did or not, it was a potential competitor. King was seeking business in the South, all newspapers in the South, but for its agreement with Greater Buffalo. It was seeking all business in the South and King was very much concerned about Greater Buffalo opening a plant in Lufkin and being able to sell cheaper because of the transportation rates, and therefore was planning to open up, through International, a plant in Sylacauga, Alabama, so that it too could sell cheaply in the South and in competition with Greater Buffalo. It is the Government's contention that it made an arrangement with Koessler to eliminate that competition by assisting Greater Buffalo in opening the Lufkin Plant, permitting Greater Buffalo to buy International so that Greater Buffalo would have the plant in Sylacauga, Alabama, with King being the exclusive sales

1387 agent, as part of that arrangement. Then no other seller of color comic supplements should have, in King's view, opportunity to beat them for southern business.

The COURT: Well, I will rule on that exhibit now. I reserve decision like I did on the others.

Mr. MOORE: Our failure to answer Mr. Bernstein's claims should not be——our silence should not——

The COURT: I have no such intention. I am trying to evaluate the evidence before me, as to whether or not under any conceivable concept of anyone it could constitute prima facie evidence of this conspiracy, and I am also interested in the Government's contention, and I am interested in yours too, as to what these letters purport to mean, except they are not in evidence yet, and I don't want to get into prolonged discussion of it. You must remember, gentlemen, you have dealt with this for a much longer time than I have. There are a lot of things in these letters that are complete blanks to me, as far as their meaning and purpose is concerned, from your contention and from the Government's. That is the reason I ask these questions.

Mr. BERNSTEIN: The Government offers P-13 in evidence for the first paragraph: "This memorandum is intended as a final review and summary of the readyprint situation," and for the next to the last paragraph, the first sentence of which reads: "I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize."

Mr. RAICHEL: You insisted on reading that when we had an understanding you were not to. That is the kind of thing that makes us interrupt and object. You did that deliberately, you know you did.

Mr. BERNSTEIN: And page two, the first paragraph.

Mr. STEVENS: It would be easy to count down and designate the paragraphs by number.

Mr. BERNSTEIN: On page two, the first complete paragraph, which begins with the words "In addition," and the second complete paragraph which begins with the word "Furthermore." Page three, the next page, the first full paragraph beginning with the words: "I believe," and the next to the last paragraph which begins with the words "As you know."

Mr. STEVENS: Objection for both defendants.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government now goes to Topic 6.

The COURT: When you said you offered 13, paragraph five, you meant to offer the whole paragraph, not just "I believe"?

Mr. BERNSTEIN: Yes, I was merely identifying that paragraph.

The COURT: All right.

Mr. BERNSTEIN: I am offering the entire document, Your Honor.

The COURT: I understand. I thought you meant the first sentence is all you offered.

Mr. BERNSTEIN: No. The entire paragraph.

The COURT: All right.

Mr. BERNSTEIN: Now, turning to Topic 6, which relates to Buffalo's acquisition of International's stock. It has been stipulated—

The COURT: Mr. Bernstein, as I told you, we have got more time, in fact, a whole day more than I thought we would. I want to talk to Judge Burke on another matter, about his coming up here, possibly. I would like to do it now. If you are going to start a new topic, I am going to recess until two o'clock and we will go on.

(Thereupon, the court was in recess at 12:10 p.m.)

1391 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

The COURT: Yes, please.

Mr. BERNSTEIN: I now move to Topic No. 6, Greater Buffalo's acquisition of International's capital stock. It has been stipulated in a stipulation of September 24, 1965, paragraph eight that on or about June 25, 1955, Greater Buffalo purchased the outstanding stock of International for \$575,000. It also has been stipulated, paragraph two, prior to June 1955, International was a printer of color comic supplements and maintained a printing plant at Wilkes-Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois, until some time after June 1955. It also has been stipulated as Appendix A attached to the stipulation of September 24, 1965—

Mr. STEVENS: What paragraph?

Mr. BERNSTEIN: Page two of the appendix, paragraph four. The International Color Printing Company, known as International, was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. Paragraph one, the same page: "Greater Buffalo, Inc., was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York." Paragraph number seven: "Greater Buffalo was a printer of color comic supplements and had been a printer

of such supplements since 1933." Paragraph eight: "Greater Buffalo printed color comic supplements at its plant in Buffalo, New York, and had facilities for printing such supplements at Dunkirk, New York. Stipulation number three——

Mr. STEVENS: We are back where?

Mr. BERNSTEIN: Stipulation—excuse me—. Now, we
 1393 are on the stipulation dated September 28, 1965, paragraph I(11): Many newspapers purchased their color comic supplements from Greater Buffalo directly; generally pursuant to written contracts for a period of one year, subject to cancellation by either party for cause on sixty days notice. Paragraph (14): In 1954 the annual gross receipts for Greater Buffalo for the sale and printing of color comic supplements was approximately \$8,613,000. During this same period International's gross receipts for the printing of color comic supplements was approximately \$8,483,000. And in the stipulation of September 24, 1965, the Appendix to it, page four, paragraph ten: In the sale of color comic supplements by Greater Buffalo, the cost of transportation was paid for by the newspaper customers. In most instances Greater Buffalo advanced the transportation costs and was reimbursed by the
 1394 newspaper customers. Now, the stipulation of September 24, 1965, page two, paragraph four: King, a Division of the Hearst Corporation, licensed newspaper feature rights, including the subject matter of comics and sold color comic supplements to newspapers. King, a Division of Hearst, did not print the color comic supplements it sold, but made arrangements to have such supplements printed for its newspaper customers. However, some newspaper subsidiaries of the Hearst Corporation did print color comic supplements. Exhibit 1 in evidence has this paragraph in it: "The company——" referring to International Color Printing Company—— signed a contract with King Features in 1925 to print all of the Syndicate's comic supplements. Later on, because of the distance to Pacific Coast, contract was amended to read 'At least 75%' of all printing sold by Syndicate.
 1395 Original contract, and renewals, were in effect from 1924 to June 1955, when we signed a new contract which will carry us to 1965 with option for renewal. By that time we will have been printing King's work for a period of over 41 years." It has been stipulated, paragraph five of the stipulation of September 24, 1965, on page two: The color comic supple-

ments printed by International for King were shipped directly for King's newspaper customers. Payments for such supplements by the newspapers were made to King pursuant to contract between King and its newspaper customers. Now, the Government offers in evidence Exhibit P-15, which was formerly known as Document 94. P-15 appears to be a document signed by J. W. Koessler, President of Greater Buffalo Press, Inc., dated June 2, 1955, addressed to Mr. F. J. Nicht, 1396 King Features Syndicate. It is offered in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. BERNSTEIN: I offer it subject to later connection as far as NEA is concerned, Your Honor.

The COURT: Let me read that, will you please? Well, Mr. Raichle, this seems to be a letter of Greater Buffalo Press.

Mr. RAICHLE: I have no objection to the letter. By way of information to Your Honor, not trying to substitute my statement for evidence, there were negotiations along this line that never resulted in a contract. I have no basis for an objection to the letter.

The COURT: You are familiar with the penciled notes all over it?

Mr. RAICHLE: No.

The COURT: Look at the original. I don't know what they say.

Mr. STEVENS: That is one of the bases of my objection.

The COURT: I have no notion what they are. I haven't read them.

1397 Mr. RAICHLE: I have no objection to the document, except as to the penciled notes.

Mr. BERNSTEIN: The document is not being offered for the penciled notes.

The COURT: I suggest that you have that recast and offer it in the typewritten form without the notes, and except for Mr. Stevens' objection on behalf of NEA, it is received. I will receive it against NEA subject to being connected up in some manner.

Mr. BERNSTEIN: Can we have it received without the penciled notes? We will substitute a document without the notes.

The COURT: All right.

(Thereupon, Government's Exhibit P-15, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to paragraph four: "Greater Buffalo Press, Inc., will grant exclusive sales rights to King Features on all runs in excess of 200,000 with the exception of the Philadelphia Bulletin and the Des Moines Register and Tribune." I invite the Court's attention to paragraph five which says: "In the plant which the Greater Buffalo Press, Inc. establishes at Lufkin, Texas, exclusive sales rights will be granted to King Features Syndicate with the exception of the Oklahoma City Times, and the Pappert Group of newspapers." I invite the Court's attention to page two, paragraph six: "The Greater Buffalo Press, Inc., is to be the exclusive printer for King Features Syndicate on runs of 200,000 or more, with the exception of such runs as King Features Syndicate now is contracting to other parties. At the expiration of these contracts, the Greater Buffalo Press, Inc., is to become the exclusive printer. Contracts with International Color Printing Company are excluded from this provision."

The COURT: Mr. Bernstein, as I understand it, the King people had others, various others, print their papers previously?

Mr. BERNSTEIN: Not at this time, Your Honor. That was the purpose of Exhibit 1. Exhibit 1 in the next to the last paragraph shows the King had all of its printing, virtually all of its printing, done at Greater Buffalo except for that at the—excuse me—King had virtually all of its printing done at International except for that on the West Coast.

The COURT: I was going to ask you; it seems that at one time that King had all of its printing done by others, not doing its own printing, in other words. And it cost them a certain amount of money to do so. After this changeover came about, which you are pointing at, whereby Greater Buffalo was to do the work with few exceptions, what was the cost factor to King of that? Do you have any figures? Was it Greater?

I'm not talking about inflation; I am talking about comparable cost between when they used to do it at various places and when Buffalo did it?

Mr. BERNSTEIN: I do not concede, Your Honor, that King did have it done at various places. The evidence shows—Exhibit 1 shows that King always had its printing done at International.

The COURT: Take International; were the costs greater or less with Greater Buffalo?

Mr. BERNSTEIN: I am unable to answer that question.

The COURT: It seems to me, I have the impression that you want to create the thought in my mind that King was under pressure to do something here and perhaps unwillingly went along with the Greater Buffalo Press idea. I thought maybe you were pointing to the fact they were paying more, equal or less or something?

Mr. BERNSTEIN: That isn't the point, Your Honor.

The COURT: But it might be interesting to me; if you
1401 don't have it, we will pass on.

Mr. BERNSTEIN: We will try and ascertain that information. The documents that we have here show that King did hope to get the printing for less under Greater Buffalo, printed for less under Greater Buffalo than under International, yes. But the contention of the Government, and it submits it for the Court's consideration, is the fact that it was in competition with Greater Buffalo for the sale of printed supplements. It had an arrangement with International in which International was its printer. So everything printed by International in competition with that printed by Greater Buffalo was sold through King. King was then in competition with Greater Buffalo for the sale of those supplements, and the Government's point is that King, having arranged with Greater Buffalo, to eliminate competition between them, then saw no
1402 problem—or rather, as part of the arrangement, did not impede the sale to Greater Buffalo by International.

Now, the next question might arise, what could King do to impede the sale; it didn't own the stock of International.

The COURT: You told me they were under some pressure, International stockholders.

Mr. BERNSTEIN: The documents that we are offering now, and will offer in the next few minutes, are designed to show Your Honor that King did not sign its contract with International for International to be its printer for a ten-year period of time until it had concluded with Greater Buffalo this deal, as evidenced by the document now before you, P-14—

Mr. STEVENS: P-15.

Mr. BERNSTEIN: P-15, and a few other documents like this, which will be submitted—that it did not conclude that contract until it had all of these things arranged in one ball of wax.

One part of the deal was that Greater Buffalo was to be the sole printer, King was to be the sole seller, whether in 1403 Texas or Alabama or in Wilkes-Barre. Another part of the deal was that Greater Buffalo was to be the sole printer by acquiring International, and as part of that acquisition, King was negotiating a ten-year contract. It is the Government's contention that had King wanted to block the sale, it would not have negotiated a ten-year contract and a contract for newsprint down at the Sylacauga Plant, that all made this very attractive to Greater Buffalo. Now, with respect to Exhibit P-16, formerly known as Document 105—I don't believe Your Honor has a copy of that—P-16 is another letter, appears to be a letter of contract terms between J. W. Koessler of Greater Buffalo Press, Inc., dated June 13, 1955, addressed to Mr. Frank J. Nicht. It is offered, again subject to connection, against NEA.

Mr. RAICHLE: I have no objection to it, except I do 1404 object to Mr. Bernstein's characterization or description of it, if I heard him correctly. It is not a contract. There were some negotiations going forward, as appears from the document, which never resulted in a contract formalizing the negotiations, for reasons which will appear. The document speaks for itself, I have no objection to it.

The COURT: All right.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: Same ruling with respect to NEA. Received. (Thereupon, Government's Exhibit P-16, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the first paragraph of P-16: "These are the provisions on which we are in agreement, and which should be included in a con- 1405 tract between King Features Syndicate and the Greater Buffalo Press, Inc." Then paragraph one is virtually the same as paragraph one in the preceding exhibit, P-15, a similar type of letter dated June 2nd, 1955. Paragraph two is similar to paragraph two of the preceding letter.

Mr. RAICHLE: They speak for themselves.

Mr. BERNSTEIN: I am inviting the Court's attention to these items to show what the Government's claims were with respect to this document. Paragraph nine reads as follows: "For the period of this contract the Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such ac-

counts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate. King Features Syndicate on its part will process all its contracts for printing four color, 1406 newspaper comic supplements through the Greater Buffalo Press, Inc., and International Color Printing Company. The exception to this provision is the contract which King Features Syndicate holds with the Dallas Times Herald. I am not going to read the next sentence. Paragraph eleven: "The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of the Greater Buffalo Press, Inc., in the event the Greater Buffalo Press, Inc., offers its business for sale. This contract is to be for a period of ten years."

Mr. RAICHLE: Wait just a second.

Mr. BERNSTEIN: Exhibit P-17 for identification, Your Honor, is another letter dated January 17, 1956, from Mr. Koessler, President of Greater Buffalo Press, Inc., to Mr. Nicht. I offer it in evidence, subject to later connection against NEA.

1407 Mr. STEVENS: We have the same objection.

The COURT: Let me read this.

Mr. RAICHLE: I have no objection to it.

The COURT: Received.

(Thereupon, Government's Exhibit P-17, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: This shows many months later they are still negotiating.

Mr. BERNSTEIN: Document P-17, first paragraph: "I am returning second draft of the proposed contract. The only thing I have changed is the exclusive commitments on the part of both parties. Our attorneys tell us this is dynamite. However, we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other 1408 business as is available, King Features to act as the selling agent and the Greater Buffalo Press as the producer. In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent. In such cases if the Greater Buffalo Press is successful in securing the account, the Greater Buffalo Press will

pay to King Features a minimum of fifty cents per thousand copies on the account thus secured." It is the Government's contention this document indicates, as of January 17, 1956, although the draft of the formal contract did not have the exclusive commitment on the part of both parties, nonetheless, that it was the intention of Mr. Koessler, and he reiterated to Mr. Nicht that the agreement was nonetheless in effect, as the document indicates.

Mr. RAICHLE: You say the contract? You were aware
1409 the contract never came into existence?

Mr. BERNSTEIN: Exhibit 18—negotiations continue as of October 1956—P-18 for identification is another letter from J. W. Koessler, President of Greater Buffalo, to Mr. F. J. Nicht, King Features Syndicate, dated October 31, 1956.

Mr. RAICHLE: What was the original Document number?

Mr. STEVENS: NEA has an objection to this.

Mr. RAICHLE: I have no objection.

The COURT: I will receive it against NEA, subject to being connected up.

(Thereupon, Government's Exhibit P-18, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to paragraph one: "The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate." Paragraph two: "The Greater Buffalo Press will present King Features Syndicate with a competitive price for its solicitation of new accounts." Paragraph three: "The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business which it secures by solicitation on its own account." The Government contends that is some evidence of the preceding arrangement for the allocation of customers between Greater Buffalo and King Features Syndicate. Paragraph four: "Our definition of new business is that which no operator in the comic printing business presently holds."

Mr. RAICHLE: Perhaps this isn't in order, and Your Honor will tell me; he offered and made mention of paragraph two. It says: "The Greater Buffalo Press will present King Features Syndicate with a competitive price for its solicitation
1411 of new accounts." Is it the Government's claim that there is something wrong about that; that that should have been a non-competitive price?

Mr. BERNSTEIN: Does Your Honor wish the question answered? I take it this is a form of an argument or discussion.

Mr. RAICHLE: I was trying to get your theory.

Mr. BERNSTEIN: The document is offered for the purpose of establishing there had been a pre-existing arrangement between Greater Buffalo and King Features Syndicate. This is further evidence of it. The fact they talk about a competitive price is not part of the Government's theory of the evidence. That fact is in the document, the document speaks for itself.

The COURT: All right, you think it is window dressing, that recital?

Mr. BERNSTEIN: Well, the Government contends that obviously then King would never consent to Greater Buffalo robbing it, overcharging it, so when part of the agreement is that the price is going to be the market price, which is synonymous with competitive, the price it means is going to be a fair, reasonable price, and there are all sorts of euphemistic expressions for that kind of pricing.

The COURT: All right.

Mr. BERNSTEIN: The Government now offers in evidence Exhibit P-19 for identification, which was one of the documents that Your Honor has excluded under the business records and excluded as a declaration of a co-conspirator. The Government re-offers it again at this time because it refers to the conversation and transaction. It is offered to elucidate the transaction that Mr. Koessler has referred to in his letter, in the letter to Mr. Nicht.

Mr. RAICHLE: That does not change the character of the document nor the basis for the Court's ruling.

1413 Mr. BERNSTEIN: The Government contends that under an arrangement, or contract, or a deal, whatever word you use to describe it, the intent and motives of the parties is very important. For example, P-17 says that the exclusive commitment is not put in the formal contract, the lawyers tell us this is dynamite. However, we consider this to be part—

Mr. RAICHLE: That is not what it says. Where does it say, "We consider this to be a part of it?"

Mr. BERNSTEIN: We, the Government, consider the document that the Court has in its hand, to be part of this whole transaction, part of this whole arrangement. The intent and purpose and motives of the party are very relevant and per-

1414 tinent to the Court's inquiry. Document P-19 is offered for the purpose of explaining motives and intents of the recipients of the document from J. W. Koessler.

The COURT: I'll make the same ruling I have right along on that.

Mr. STEVENS: May an objection be noted for NEA.

The COURT: What do you consider the second paragraph—what are you going to make of this if it were in evidence, “—with the understanding that the purchase is—” the purchase of what?

Mr. BERNSTEIN: Of International. The Government contends that this is the evidence it would rely on to show that this was all one ball of wax. The purchase of International is contingent on the outcome of the contract between King and Greater Buffalo. That was just offered in evidence.

The COURT: The same ruling I have made on all documents of this class, that I reserve decision on the offer.

Mr. BERNSTEIN: Again—

The COURT: Let me ask you; what do you recall the background of that particular document is as to where it was found? Is that one of the desk documents?

Mr. BERNSTEIN: Yes, Your Honor.

1415 The COURT: All right.

Mr. BERNSTEIN: The Government now offers in evidence a document which has been excluded under the business records and co-conspirator rule; P-20, which has been identified as an April 13, 1955, memorandum by Frank J. Nicht, which the witness described as having been in the desk drawer of Mr. Nicht, and it is offered for the same purpose, again, to show the intent and motive of the parties. Inviting the Court's attention to the first paragraph: “These are the basic conditions on which a deal with GBP would hinge,” and then the thoughts and observations and operations of the mind of Mr. Nicht to show his intent and his motive in connection with the execution of the contract that will later be offered in evidence.

Mr. STEVENS: Objection for both parties, all parties.

1416 Mr. RAICHLE: This is probably the most clearly in competent of all of them.

The COURT: I didn't hear you.

Mr. RAICHLE: I beg your pardon. It seems to me this is the most clearly incompetent of all. It is the one I picked to illus-

trate the musings: "Why is he so difficult to reach?" "What happened to his AP printing?" "Why does he stir things up in Texas?"

Mr. BERNSTEIN: I invite the Court's attention to the first paragraph—

Mr. RAICHLE: Well—oh, well, I assume Your Honor is going to rule.

The COURT: I have no problem in ruling! I am going to make this same ruling I have made in all instances. I am reading it thoroughly for the first time.

Mr. BERNSTEIN: Exhibit P-21 is another one of the documents in the same category as Exhibit P-20, and the Government offers it in evidence. This is with respect to the next topic, Topic 8; that general topic is that had King chosen to do it, it could have prevented Greater Buffalo from 1417 acquiring International. I invite the Court's attention to the first paragraph of that document.

Mr. STEVENS: Objection on behalf of all defendants. We are now on Topic 8?

Mr. BERNSTEIN: That is correct. I also invite the Court's attention particularly to page 2, the paragraph starting "Regarding No. 3:"

Mr. STEVENS: May I ask again what paragraph you are referring to?

Mr. BERNSTEIN: Page two.

The COURT: I will make the same ruling on that, Mr. Bernstein. Did you have those letters in your possession at the time you took the deposition of Nicht?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Was he confronted with these?

Mr. BERNSTEIN: Yes, Your Honor. The deposition—

The COURT: I just asked whether you made something of these with these letters with the author?

Mr. BERNSTEIN: Yes, Your Honor.

1418 The COURT: All right, I will wait for that.

Mr. BERNSTEIN: Perhaps this would be a good time to put that in, as to what was done with that.

Mr. RAICHLE: What is he talking about?

The COURT: Don't change on account of me. It seemed to me if you had letters like this that you claim show conspiracies, a conspiracy, that you would want to meet one of the agents,

one of the principals head-on and ask him to explain what he was talking about.

Mr. BERNSTEIN: At the time the deposition was taken, Mr. Nicht was in very poor health, as Mrs. Lutz indicated yesterday.

The COURT: Maybe it wasn't done, I don't know. Here is some stuff that you claim is made by one of the key agents of one of the principals, found in his own files. I would assume that you would have confronted him with those when you were examining him. Maybe you didn't.

Mr. BERNSTEIN: That is—well, yes, he was examined in connection with it.

1419 The COURT: I don't look for it now if you have other things to go on to. I have that question in my mind.

Mr. BERNSTEIN: I will answer the question tomorrow morning, if the Court please.

The COURT: All right.

Mr. BERNSTEIN: Exhibit P-22 is another document that has been identified by Mrs. Lutz and refused in evidence on the grounds of business records and a declaration of a co-conspirator. Again, this is re-offered at this time for the purpose of showing the purpose and the motives and ideas of the parties. I invite the Court's attention to the first three paragraphs.

Mr. STEVENS: Objection on behalf of all defendants.

Mr. BERNSTEIN: It has been stipulated that Mr. Berlin was the President of Hearst on July 21, 1954, and that Mr. Gortatowsky was the Chairman of Hearst Subsidiaries on that date.

The document is being offered for the fourth from the
1420 last paragraph on the first page.

Mr. RAICHLE: What? I couldn't hear you.

Mr. BERNSTEIN: The fourth from the last paragraph on the first page, also the first full paragraph on page two.

Mr. STEVENS: If I haven't lodged an objection against this document on behalf of all defendants, I do.

The COURT: Same ruling, Mr. Bernstein.

Mr. BERNSTEIN: Document P-23 for identification is a different category than the preceding exhibit. It appears to be a contract between—the first page is a letter of transmittal of an agreement and the second page and following pages consist of an agreement between King Features Syndicate and Interna-

tional Color Printing Company, dated July 30, 1955. Both of these documents are offered in evidence.

Mr. STEVENS: Objection for both defendants.

The COURT: Is this a contract that came into being?

Mr. BERNSTEIN: Yes, Your Honor. The Court's attention is invited to the first paragraph: "Attached are three signed copies of agreement dated July 30th. I presume you will sign and return one copy for our files." Then going to the agreement on the second page, it is an agreement made, "This 30th day of July 1955, at the City of New York, State of New York, between King Features Syndicate, Division of the Hearst Corporation, hereinafter called 'Syndicate' and International Color Printing Company, hereinafter called 'International' FIRST: The term hereof shall be for a period of ten years beginning on the 31st day of July 1955, and shall thereafter renew itself for like periods unless either party notifies the other by registered letter at least two years before the end of any said periods of its desire to terminate this agreement. SECOND: International, at its plants in Wilkes-Barre, Pennsylvania, or Peoria, Illinois, or at other plants which may later be operated by it, will print and prepare for shipping to the various clients designated by the Syndicate those quantities of colored supplements as the Syndicate may order. The total of such supplement printing shall be a minimum of 75% of the Syndicate's supplement printing requirements, except as provided in Paragraph sixth, or when both parties agree mutually to a lower minimum. All supplement pages will be printed with four colors, or less, as designated by Syndicate." I discontinue reading on that page, and go to page two, paragraph four: "While International is printing at least the minimum percentage of Syndicate's supplement printing requirements as outlined in paragraph second above, International agrees that it will not produce or print comic supplements for any organization other than the Syndicate, and in no event without the written consent of the Syndicate."

Mr. RAICHLE: I have no objection to this.

The COURT: Received against both defendants here, subject, of course, to being connected with NEA somehow. How do you expect to connect that with NEA? Do you claim there is a supplemental contract with NEA?

Mr. BERNSTEIN: As far as NEA is concerned, this document—the Government's contention is if the conspiracy is established by other evidence, and if it is established later that NEA joined the conspiracy, then the Government's contention is that all acts or declarations of its so-called partners, as it were, made during the period of that conspiracy, relating to the conspiracy, are also receivable as against NEA.

(Thereupon, Government's Exhibit P-23, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-24, Your Honor, is another one of the documents excluded before, but the Government renews its request at this time and offers it as a business record under the specific grounds that Mrs. Lutz identified this as a salesman's bulletin, one routinely, continuously issued by Mr. Nicht to salesmen. It would be a memorandum made in the regular course of business.

The COURT: I excluded it on that ground, I make the same ruling on the other ground sought.

Mr. BERNSTEIN: Now, going to Topic 9, Your Honor, to prove that King and NEA were competitors prior to November 1955. It has been stipulated—I'm referring now to the stipulation dated September 28, 1965, paragraph 13: "Prior to June 1955 King's competitors in the sale of color comic supplements to newspapers included Greater Buffalo, NEA, Eastern Color Printing Company, World Press, Inc., Eastern Color Press, Inc., and Acme Color Print Company, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955." The Government now offers in evidence portions of the deposition of Mr. Nicht taken on March 20, 1961, page 26, line 12—

Mr. RAICHLE: Start at the top of the page.

Mr. BERNSTEIN: Top of page 26. This is the direct examination of Mr. Nicht:

"Q. Were there any other competitors competing with King Features Syndicate?

"A. I think Star Color Printing Company at Wilmington, Delaware.

"Q. Did Star, to your knowledge, actually print the color comic supplements?

"A. Yes, sir."

Mr. RAACHLE: Excuse me, don't you think you ought to start on the page before if you are going to paint a competitive picture; start with line 6 on page 25.

1426 Mr. BERNSTEIN: Line 6, page 25:

"Q. I asked you to name your competitors in 1954. I now ask you whether you considered in 1954 World Color to be a competitor?

"A. I think so.

"Q. Did World Color, to your knowledge, solicit accounts which you or King Features was interested in or was then servicing?

"A. I don't know just how they operated on sales.

"Q. What were the facts which then indicated to you that World Color was a competitor?

"A. We lost a few runs to them.

"Q. Where were these runs situated?

"A. I think they were in the central territory.

"Q. Do you recall the circumstances or the names of these particular runs?

"A. No, I don't.

"Q. Do you recall the circumstances under which you lost those runs?

"A. I'm not clear on that point.

"Q. Were there any other competitors competing with King Features Syndicate?

"A. I think Star Color Printing Company at Wilmington, Delaware.

"Q. Did Star, to your knowledge, actually print the
1427 color comic supplements?

"A. Yes, sir.

"Q. To your knowledge, did they have salesmen or people soliciting accounts?

"A. I think so.

"Q. Going back to 1954, which of the companies listed by you did you consider to be your leading or keenest competitors?

"A. Greater Buffalo.

"Q. Going down the line as far as competition was concerned, who would follow?

"A. NEA.

"Q. After NEA/?

"A. I mentioned those before—Chicago Tribune, United Features, Eastern Color. That is about it."

Mr. STEVENS: Continue.

Mr. RAICHLE: Just the next question and answer.

Mr. BERNSTEIN: Line 22:

"Q. When you mentioned the Chicago Tribune, in other words, in 1954 you considered the Chicago Tribune to be a competitor of King Features?

"A. Yes, sir.

"Q. To your knowledge, did Chicago Tribune at that time actually print color comic supplements?

1428 "A. No, sir.

"Q. Do you know the source of the Chicago Tribune's supply of color comic supplements which they sold in competition to King Features Syndicate?

"A. I believe it is Greater Buffalo.

"Q. The other syndicate you mentioned——

"A. United Features.

"Q. Do you know whether at that time United Features actually printed color comic supplements?

"A. I don't know about that time.

"Q. Do you know at any time whether United Features printed color comic supplements?

"A. They, I believe they had some of their supplements printed at Buffalo Color Plant or the Buffalo Color Press, or whatever you call it.

"Q. Then you don't know whether United Features ever itself did the physical printing of the color comic supplements?

"A. No, they didn't do it themselves.

"Q. In other words, you are able to state to your knowledge they didn't do it?

"A. That's right.

"Q. They were, like King Features, a sales agent, and they bought it and re-sold it?

"A. That's right."

1429 Exhibit P-25 for identification, Your Honor, appears to be a letter from Frank J. Nicht to Mr. J. W. Koessler, President of the Greater Buffalo Press, marked confidential, dated August 17, 1955, and it is offered in evidence.

Mr. STEVENS: Please note an objection for NEA.

Mr. RAICHLE: No objection.

The COURT: You say you have no objection to it?

Mr. RAICHLE: No.

The COURT: All right, received. I will note your objection, subject to being connected up to NEA.

(Thereupon, Government's Exhibit P-25, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Court's attention is particularly invited to the first paragraph: "Dear Walter: I am sure you must have realized that with the consummation of our
1430 different negotiations our contacts would very likely become of more and more frequent occurrence and that's just the way it seems to be working out. Almost every-day situations and problems arise. Of course, I will try not to bother you with any in which you are not directly concerned." I will skip to the third from the last paragraph which reads: "Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye-to-eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process." With respect to P-26 for identification, formerly known as Document No. 92, which appears to be a letter from J. W.
1431 Koessler, President, Greater Buffalo Press, to Mr. Frank J. Nicht, dated August 22, 1955, the Court's attention is—

Mr. STEVENS: There is an objection on behalf of NEA.

The COURT: You have no objection, Mr. Raichle, I take it?

Mr. RAICHLE: I have no objection.

The COURT: Received. Received against NEA, subject to being connected up.

(Thereupon, Government's Exhibit P-26, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: There is some handwriting here.

Mr. BERNSTEIN: It is not offered for the handwriting; it is offered particularly for the first three paragraphs. It has been stipulated, page 8 of the Appendix to Stipulation, dated September 24, 1956, it has been stipulated: "That from January 1, 1954, to April 3, 1958, that Herbert W. Walker was
1432 Vice-President of NEA." The document is written on August 22, 1955, during that period, and it reads as follows: "I told you on the phone—" this is from Koessler to Nicht—Herbert Walker has been identified as Vice-Presi-

dent—"Dear Frank: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere in his present operation." The third paragraph: "I think something will come of this in the next few weeks and abeyance from that source will be removed." It has been stipulated, going to Topic 10, that Greater Buffalo and NEA were competitors in the sale of color comic supplements to newspapers prior to October 1955. It has been stipulated in the stipulation of September 24, 1965, paragraph seven, page three: "Prior to 1955 Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King, NEA, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955." Going to Topic 11, Greater Buffalo eliminated competition with NEA when it agreed to purchase Buffalo Color Press, Inc. It has been stipulated in the Appendix to the stipulation of September 24, 1965, on page two, paragraph three—

Mr. STEVENS: This appendix seems difficult for me to find.

Mr. BERNSTEIN: Excuse me, Your Honor. I am talking about paragraph three. It has been stipulated that: "Newspaper Enterprise Association, Inc. (NEA) was a corporation organized and existing under the laws of the State of Delaware, with the principal place of business in Cleveland, Ohio. NEA was a subsidiary of the E. W. Scripps Company." It has been stipulated,

paragraph eighteen of the same document: "NEA licensed newspaper feature rights, including the subject matter of comics and sold color comic supplements to newspapers at least from 1955 to 1961. NEA itself did not print the color comic supplements which it sold, but had such supplements printed by Buffalo Color Press, Inc., and other comic printers." Paragraph nineteen: "Buffalo Color Press was a printer of color comic supplements and maintained a printing plant in Buffalo, New York, until a short time after October 1955." Paragraph twenty: "Until its liquidation in 1956, Buffalo Color Press was a subsidiary of NEA. NEA handled the sale to newspapers of the majority of the color comic supplements printed by Buffalo Color Press prior to October 1955." The Government now submits P-27 for identification which was formerly known as Document 14. P-27 for identification purports to be a contract between Greater Buffalo Press, Inc., and Buffalo Color Press, Inc., this is offered against both defendants, Your Honor.

Mr. STEVENS: There is no objection by NEA.

Mr. RAICHLE: I have none.

The COURT: Received.

(Thereupon, Government's Exhibit P-27, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the first page, addressed to Greater Buffalo Press, Inc.: "Gentlemen: This letter sets forth the agreement we have made with you with respect to our plant in Buffalo, New York, and the supplement printing now being done in that plant. 1(a) We agree to sell to you and you agree to buy from us all the machinery, equipment, spare parts, supplies, furniture, fixtures and other tangible personal property located in our plant at 52-54 1436 Carroll Street, Buffalo, New York (which we will call 'our Buffalo Plant') on the closing date specified in this agreement. We also agree to sell to you and you agree to buy from us all the newsprint paper and ink we have in storage at the Grant Terminal Warehouse, foot of Commercial Street, Buffalo, New York, on the closing date. 1(b) For the above, you agree to pay us the sum of \$25,000 in cash, plus an amount equal to our cost on all newsprint paper in rolls, ink in drums, metal and supplies in our Buffalo Plant and in storage for us at the Grant Terminal Warehouse, Buffalo, New York, on the closing date. The 'closing date' under this agreement shall be January 14, 1956, or such other date as you and we may mutually agree upon." Now, turning to page two, and before reading paragraph three, it has been stipulated in the stipulation dated September 24, 1956, paragraph six, as follows: "NEA at one time was known as NEA Service, Inc. In 1955, United Features Syndicate, Inc., was a wholly owned subsidiary of United Press Association of New York, and during 1955, United Press Association of New York became a wholly owned subsidiary of E. W. Scripps Company." I digress; Your Honor recalls there was mention made of United Features Syndicate in Nicht's deposition when asked about competitors, and this paragraph of the stipulation refers to the relationship of the United Features Syndicate, Inc., to NEA. Paragraph three—I am resuming my reading from P-27, the agreement between Buffalo Color Press and Greater Buffalo Press, Inc.: "We agree to turn over to you on the closing date all our supplement printing for the following named customers:

NEA Service, Inc., of Cleveland, Ohio, a named customer——" I am not reading the next few words——

1438 "United Features Syndicate, Inc., of New York——"
I am deleting some words——"United Press Association of New York, New York——" I am deleting some words——"The Chicago Daily News of Chicago, Illinois; The Columbus Citizen of Columbus, Ohio; The Indianapolis Times of Indianapolis, Indiana; The Knoxville News-Sentinel of Knoxville, Tennessee; The Evansville Courier-Press, of Evansville, Indiana; and their respective successors and assigns (all of which we will call the 'named customers')." Paragraph four: "You agree to do supplemental printing on order from any or all of the named customers at your established schedule of rates——" there is an exception, subject to an exception, I won't read that. Then on page four, paragraph five: "Supplement printing

1439 under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular newspaper for which the work is done, unless work is being done for a newspaper which receives a supplement which is part of a readyprint run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular readyprint run. Printing may be done now at either your plant in Buffalo, New York, or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas, and Sylacauga, Alabama, and any other plants which you may construct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants."

Page five, paragraph six: "In consideration of the
1440 supplemental printing turned over to you under this agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows: (a) For each 1,000 copies of any standard page size supplement produced by you for any of the named customers, you shall pay us the sum of 6¼¢ multiplied by the number of pages in the supplement." I am omitting reading the rest of that page. Going to page 6, paragraph eight: "This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W.

Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America." P-28 for identification, Your Honor, is another contract in the form of a letter between NEA 1441 Service, Inc., dated October 20, 1955, and the Greater Buffalo Press, Inc.; it is offered in evidence against both defendants.

Mr. STEVENS: No objection for NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-28, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Paragraph one of the letter states as follows:

"This letter sets forth the agreement we have made with you with respect to new customers for supplement printing which we may hereafter secure for you. 1. You agree to do supplement printing on orders we secure for you either from or for the account of customers who are not now on your books. When any such order secured by us and delivered to you, the customer and the successors and assigns of the customer from, or 1442 on whose account, the order was secured shall thereafter be known as and is hereinafter called 'a new customer.'

You agree to keep a list of the new customers we secure for you and to confirm to us when each new customer is added to that list. 2. You agree that you will do supplement printing for the new customers at your established schedule of rates——" this is subject to an exception, which I won't read. I skip to page three, paragraph three: "Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular new customer for which the work is done, unless work is being done for a new customer which receives a supplement which is part of a readyprint run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically com- 1443 bined shipping and printing cost for that particular readyprint run." I won't read the rest, it is similar to the paragraph in the preceding exhibit which refer to the printing for existing customers. Then paragraph four states: "In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree that you will pay us or our nominee an amount to

be determined as follows:—" then the same rate is set forth in paragraph four as in the preceding contract. And on page four, paragraph five: "This agreement shall take effect on January 16, 1956, or such later date as you and we may mutually agree upon and continue in effect for ten years and as long thereafter as your company or any successor, assign, affiliated

or subsidiary company or any company in which either
1444 Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America."

Mr. STEVENS: If the Court please, several times Mr. Bernstein said such and such a paragraph was the same as the previous exhibit. I don't know whether that is a fact or not. Of course, the documents speak for themselves. I wouldn't want to be excepting to something if, in fact, it wasn't.

The COURT: Yes.

Mr. BERNSTEIN: Now, Government's Exhibit P-29, formerly known as Document 25, appears to be a letter from L. E. Herman, Vice-President. It has been stipulated at the Appendix to stipulation of September 24, 1965, that Mr. L. E. Herman—

Mr. RAICHLE: There is no objection.

Mr. STEVENS: No objection to this letter.

The COURT: Received.

1445 (Thereupon, Government's Exhibit P-29, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: It has been stipulated that Mr. L. E. Herman was President of Buffalo Color Press, Inc., from January 1, 1950, to March 17, 1956; and Vice-President of Greater Buffalo Press, Inc., from March 1956. The document is written March 8, 1956, and signed by Mr. Herman as Vice-President, and it is addressed to a newspaper syndicate, and it is offered for the purpose of evidencing that the transaction was consummated. Exhibit P-30 for identification, May 4, 1956, memo to L. A. Bertoli, with the initials HWW. We have a stipulation concerning who HWW was. I offer the document in evidence. This is offered for the purpose of showing that the contract was implemented.

1446 Mr. STEVENS: No objection from NEA.

The COURT: Is that offer against Greater Buffalo?

Mr. BERNSTEIN: It is offered for the purpose of showing that the contract was implemented.

Mr. RAICHLE: I think I will note an objection to that, unconnected with us. Actually, I think it is. I'm not too serious about it; go ahead.

The COURT: All right, received.

(Thereupon, Government's Exhibit P-30, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: It has been stipulated in paragraph eight that the initials HWW in Exhibit P-30 indicate this document was either prepared by or under the supervision of Herbert W. Walker. It has been stipulated that at the time of this document Mr. Walker was Vice-President of NEA, Vice-

President of Buffalo Color Press, and it is merely
1447 offered to show that the contract was implemented. P-

31, Your Honor, is also offered for the same purpose. It appears to be a document with the initials EHA, dated June 8, 1956. It has been stipulated that the memorandum was to Ned Mills, Sales Representative of NEA, and that the initials EHA indicate that the document was prepared by or under the supervision of Earl H. Anderson. It has been stipulated at that time he was Vice-President of Buffalo Color Press, and at that time that the initials—it has been stipulated that William H. Borglund was a director of NEA during the period when this document was executed.

Mr. STEVENS: No objection for NEA.

Mr. RAICHLE: No objection.

The COURT: Who is Ned Mills?

Mr. BERNSTEIN: Ned Mills is a Sales Representative of NEA. This is from the Vice-President of NEA to his
1448 sales representative advising that it says: "We were delighted to get your wire this morning advising that you had made a new printing arrangement for the Lindsay-Schaub papers at our suggested rate." Then it urges it is confidential at the bottom, a blind to—a blind copy, that is, to other members of the NEA organization: "In addition, we will have royalties of \$54 per thousand coming from Greater Buffalo Press on this run."

(Thereupon, Government's Exhibit P-31, previously marked for identification, was received and marked in evidence.)

The COURT: We will take a short recess.

(Thereupon, the court was in recess at 3:25 p.m.)

1449 (Proceedings resumed, pursuant to recess, commencing at 3:50 p.m.)

The COURT: Yes.

Mr. BERNSTEIN: P-32 for identification, Your Honor, formerly known as Document 77, appears to be a letter from Mr. Koessler, dated December 5, 1956, to Earl H. Anderson, NEA Service. I offer the letter in evidence.

Mr. RAICHLE: No objection.

Mr. STEVENS: Just a moment, please? No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-32, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The letter reads: "Dear Earl: We have a man, Fred Jerauld by name, who is working out of Lufkin, on the larger Southwest accounts, and Albuquerque, New Mexico, is one of these. We have to get these larger papers on 1450 our own to keep the general over-all price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve. It is my understanding that the Albuquerque Journal is not a Scripp paper. The Scripp paper, of course, is yours if you can sell them a comic section." P-33 for identification, formerly Document 45, appears to be a sales report of NEA representative R. C. Whitehead, dated March 29, 1957. This document is offered at this time solely with respect to NEA and will be re-offered at a later time with respect to Greater Buffalo as part of a declaration of a co-conspirator. At this time it is being offered solely against NEA as an admission.

Mr. STEVENS: We have no objection.

The COURT: Received.

Mr. BERNSTEIN: I'm particularly inviting the Court's 1451 attention to the third and fourth paragraph.

The COURT: All right.

(Thereupon, Government's Exhibit P-33, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The third and fourth paragraphs: "I have talked with Cleveland this week and pointed out to Earl Anderson and W. H. B. that I think we are justly entitled to negotiate a contract with the Times-Union over and above Greater Buffalo Press—since we had been working with, and making frequent calls on Millar, encouraging him to discontinue his

printing, and permit us to take over the job." It has been stipulated that William H. Borglund was Vice-President of NEA from July 27, 1955, to January 1, 1961. I resume my 1452 reading: "I feel that whether we negotiate the contract or whether Greater Buffalo Press negotiates the contract, and allows us 75¢ per thousand profit—in either case it should be made known to Greater Buffalo Press we expect to participate in this account." P-34, Your Honor, for identification, formerly Document 75, is a letter dated December 3, 1957, with the initials WHB, which has been stipulated was prepared by or under the supervision of William H. Borglund, who just has been identified, a memorandum to Ned Mills, who it is stipulated is a sales representative of NEA. This document too is offered as against NEA as an admission and will later be offered as against Greater Buffalo under the co-conspirator rule, we are relying particular on the first paragraph, Your Honor.

Mr. STEVENS: May I have a moment to read it, please?

1453 No objection from NEA.

The COURT: Received.

(Thereupon, Government's Exhibit P-34, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Now, turning to Topic No. 12; at Greater Buffalo's request, King met with NEA and Greater Buffalo and agreed that NEA and King would not solicit each other's accounts. We offer in evidence the deposition of Frank J. Nicht, taken on March 20, 1961, page 137, line 13:

"Q. Was the sale of the outstanding stock of International Color Printing Company to Mr. Koessler or to Greater Buffalo Press consummated, as far as you know?

"A. Yes, sir.

"Q. What happened at that time or thereafter in regard to your original interest in King Features Syndicate becoming the selling agency or exclusive sales agent for Greater Buffalo Press?

1454 "A. That we wanted to happen.

"Q. Pardon me, I didn't hear that.

"A. That we wanted to happen. We wanted to be exclusive sales agents for Greater Buffalo Press.

"Q. Did that ever come to pass?

"A. No, sir.

"Q. Thereafter, and I am talking about after the physical sale, did you, on behalf of King Features Syndicate, take any steps to become the exclusive sales agent for Greater Buffalo Press?

"A. Yes, sir.

"Q. What steps, if any, did you take?

"A. We talked about certain situations. We began to talk about a contract that would cover our arrangement for selling.

"Q. Going back to the period before the actual sale took place, in your discussions with Mr. Koessler, was any agreement or understanding reached at that time in regard to King Features Syndicate becoming the exclusive sales agent for Greater Buffalo Press?

"A. Do you mean before the purchase by Mr. Koessler?

"Q. Yes. I am talking about oral understanding now.

1455 "A. Yes, I think that was touched upon.

"Q. When I say 'understanding,' I mean did Mr. Koessler indicate to you that he would want, or would permit King Features Syndicate to become the exclusive sales agent for Greater Buffalo Press?

"A. He gave me hope for that.

"Q. When you say 'hope,' did he tell you it would happen?

"A. He indicated we could make a deal.

"Q. Thereafter you say you had discussions and correspondence with Mr. Koessler in that regard, and I speak now of the period after the actual sale; is that right, sir?

"A. Yes.

"Q. How far did those discussions proceed?

"A. I think that is pretty well covered by certain letters that Mr. Koessler wrote to the Syndicate.

"Q. At this time, Mr. Nicht, I show you Plaintiff's Exhibit 6-A—"——which is P-16 in this action——"—and Plaintiff's Exhibit 6-C—which is P-15 in this action"———and ask you whether these two exhibits, which are also directed to you from Mr. Koessler, contain the substance of the representations he made to you at the time in regard to King
1456 Features Syndicate becoming the sales agent for Greater Buffalo Press?

"A. Yes, sir, they do.

"Q. At the time the stock of International Color Printing was purchased by Greater Buffalo Press, was Buffalo Color Press in business?

"A. Yes.

"Q. Do you know whether it operates today and is in business?

"A. I don't think it does.

"Q. When did you first learn that it had ceased doing business?

"A. After the deal was consummated.

"Q. When you say 'deal was consummated,' you mean the deal for the purchase of the stock of International Color Printing?

"A. Yes, after—no. Let me put it this way: I learned about that sale after the deal was made between Greater Buffalo Press and Buffalo Color.

"Q. Was this after, though, the sale of the stock of International Color Printing to Greater Buffalo Press?

"A. Yes.

"Q. Prior to your learning about the sales of Buffalo Color Press to Greater Buffalo, did you have any knowledge
1457 that Greater Buffalo was going to buy Buffalo Color Press?

"A. I did not, sir.

"Q. When you heard about the sale taking place, then, am I correct in stating that was the first knowledge you had that any arrangements had been entered into?

"A. Yes, sir."

Now, I return to page 70, line 25:

Mr. RAICHLE: You are going backwards?

Mr. BERNSTEIN: Going backwards.

Mr. RAICHLE: Very confusing.

Mr. STEVENS: Page 70?

Mr. BERNSTEIN: Page 70, line 25:

"Q. Directing your attention to the Fall of 1955, was NEA at that time a competitor of King in the sale of color comic supplements?

"A. Yes, sir.

"Q. Do you know the person who at that time was president or head of the NEA?

"A. I don't know what their official set-up was.

"Q. Who is the person, as far as King was concerned, who directed or had final authority, to your knowledge, in running NEA?

"A. Mr. Walker.

1458 "Q. What is his full name?

"A. I don't know his first name.

"Q. But it is Mr. Walker; is that correct?

"A. I believe so.

"Q. Prior to the Fall of 1955, did you ever meet with Mr. Walker?

"A. No, sir.

"Q. Thereafter, did you ever meet with Mr. Walker?

"A. Once.

"Q. Do you remember when that meeting took place, sir?

"A. It could have been in 1955, the last part of the year.

"Q. Would it be around November or December?

"A. That is about it, around there.

"Q. In other words, you are not positive?

"A. I am not positive, no, sir.

"Q. You are able to state that it was the last part of 1955?

"A. That is right.

"Q. Where did you meet with Mr. Walker?

"A. In a hotel on Lexington Avenue.

"Q. Were there any other people present?

"A. Three others that I can think of.

"Q. Who were they?

"A. Mr. Koessler.

1459 "Q. Is that Walter Koessler?

"A. Walter Koessler.

"Q. At that time what company was he associated with?

"A. Greater Buffalo Press.

"Q. Who else was there?

"A. Mr. Walker and Mr. Anderson, I believe.

"Q. What company, if any, was Mr. Anderson associated with?

"A. NEA.

"Q. Was anyone else present, other than yourself?

"A. I can't remember.

"Q. When you say 'meeting,' do you recall whether that was a meeting that took place on one day or did it extend over one day?

"A. Just the once.

"Q. How long did that meeting last, sir?

"A. I don't know.

"Q. Will you please tell us the circumstances as to how you came to meet with Mr. Walker at this hotel on Lexington Avenue?

"A. It's my recollection that Mr. Koessler called me up and told me that they were there and wanted me to come over.

"Q. When did you receive that call from Mr. Koessler?
1460 Was that immediately prior to the meeting or some time before the meeting?

"A. I think immediately prior.

"Q. Would that be the same day when the meeting took place?

"A. I think so.

"Q. Do you recall whether the meeting took place in the morning or in the afternoon?

"A. I think it was in the afternoon.

"Q. Do you recall the name of the hotel on Lexington Avenue?

"A. Beverly.

"Q. I want your recollection. You say it is the Hotel Beverly?

"A. Beverly.

"Q. In what room at the hotel did you meet with Mr. Walker and the other people you just mentioned?

"A. I don't know. Did you say what room?

"Q. What room or suite?

"A. It was a suite—two rooms, so far as I know.

"Q. Did you know at the time to whom the suite belonged?

"A. No, I didn't.

"Q. Did Mr. Koessler in the telephone conversation
1461 you just related to us indicate to you all the people whom you subsequently found to be at the meeting?

"A. I don't recall that.

"Q. At any rate, did you attend a meeting?

"A. That's right, sir.

"Q. That was the same afternoon?

"A. That's right."

Now, unless there is an objection, I propose to skip to page 8.

Mr. RAICHLE: I would like the rest of the page read.

Mr. BERNSTEIN: Line 21:

"Q. Would you please tell us now the substance of the discussion that took place at that meeting?

"A. I am very hazy on what went on at that meeting. I have very little recollection concerning it.

"Q. Without going into the specific details, what was the general discussion there? I am not interested in the individual words each person said, but the substance of what took place.

"A. Again, I have to say that I am very hazy on that point. It was a meeting called at no instigation of ours. Maybe to get me acquainted with Mr. Walker or something like that, whom I hadn't met before, at least not to my knowledge."

1462 Mr. RAICHLE: All right.

Mr. BERNSTEIN: Skipping to page 80, line 4:

"Q. At this meeting that took place in the last part of 1955 at the hotel on Lexington Avenue, was there any discussion at that meeting relating to the printing of color comic supplements for NEA——"

Mr. STEVENS: Wait, please, you are going too fast. You said line 4?

Mr. BERNSTEIN: I'm sorry, line 14.

Mr. STEVENS: All right.

Mr. BERNSTEIN: Line 14:

"Q. At this meeting that took place in the last part of 1955 at the hotel on Lexington Avenue, was there any discussion at that meeting relating to the printing of color comic supplements for NEA?

"A. I don't remember.

"Q. Was there any discussion at that meeting relating to the sale or the solicitation of business by the representatives of the parties present?

"A. I don't recollect that, either.

"Q. Do you recollect anything at all about that meeting?

1463 "A. Yes, just one thing, and strange as it may seem,

I think this is the only thing that imbeds itself in my memory concerning that meeting, which was very short, and that referred to a so-called truce. I assume that might have been the purpose of the meeting.

"Q. What was this truce?

"A. A truce between NEA and King Features, so far as readyprint business was concerned.

"Q. What exactly does that mean?

"A. I used the word 'truce,' because I may have used it then. That is, to stop bothering each other.

"Q. When you say to stop bothering each other, do you mean that you weren't going to compete for each other's then existing newspaper accounts?

"A. That's right, sir.

"Q. Was that matter discussed at this meeting?

"A. That is the only thing I recollect as having happened there.

"Q. When you left the meeting, as far as King Features was concerned, how was this so-called truce or arrangement to operate?

"A. We were to leave each other alone.

1464 "Q. By leaving each other alone, does that mean as far as King is concerned or does it mean as far as all the parties are concerned?

"A. Just between NEA and King.

"Q. Was anything said at that meeting in regard to Greater Buffalo?

"A. I don't recall that.

"Q. But at least NEA and King were not to solicit each other's accounts?

"A. That was the intention."

Mr. STEVENS: Continue, please.

Mr. BERNSTEIN: Line 9:

"Q. Was there any discussion about new business or newspaper which either one of them was not servicing at that time?

"A. I don't recollect that.

"Q. Thereafter, pursuant to that discussion or meeting which took place in the last part of 1955, and I am speaking of immediately thereafter, did King attempt to solicit then existing accounts being services by NEA?

"A. We did.

"Q. Immediately after the meeting?

"A. Oh, I wouldn't say immediately. I don't know when, but it happened.

1465 "Q. I am talking about the period that immediately followed the meeting?

"A. Well, I can't answer that.

"Q. I am talking about the month after that?

"A. I wouldn't remember that."

Do you want anything more?

Mr. RAICHLE: I want line 8 read, read line 8.

Mr. BERNSTEIN: Page 83:

"Q. You have no idea whether King adhered to that discussion or agreement or truce which you described?

"A. That's right, sir.

"Q. Did King adhere to it at all for any period of time, to your knowledge?

"A. I would say we took it easy.

"Q. You say you took it easy. I want to know whether you adhered to that truce or agreement?

"A. I would say no.

"Q. At no time at all did you adhere to it?

"A. Yes.

"Q. Yes, what? You did adhere to it or you did not?

"A. I told we did and we didn't.

"Q. I am talking about the period immediately after that meeting, did King adhere to that agreement?

1466 "A. Then my answer to that is that I don't remember.

"Q. Did you, after that, after leaving that meeting, have any discussions with your salesmen in regard to what the policy of King was going to be about soliciting then existing accounts of NEA?

"A. I don't remember that."

I don't propose to read any more.

Mr. RAICHLE. That is all right.

Mr. BERNSTEIN. All right.

Mr. STEVENS. Read the last question and answer on the page, page 83.

Mr. BERNSTEIN. Line 23.

"Q. Do you recall ever receiving information from your salesmen that they would not solicit any NEA business?

"A. They wouldn't initiate that.

"Q. What they actually did. I am talking about factually what they did.

"A. Some of them didn't.

"Q. They did not solicit NEA accounts?

"A. No.

"Q. Was this the result of communication from you?

"A. I think so.

1467 "Q. Going back to my original question, namely whether the truce was adhered to by King for any period of time after the meeting held at the hotel on Lexington Avenue, does that refresh your recollection now as to whether or not King adhered to the truce?

"A. It did in some instances.

"Q. When you say, 'some instances,' does that mean that you recall one or two cases where King did not go out and actively solicit a newspaper account being serviced by NEA?

"A. That's right.

"Q. Immediately after that meeting, to your knowledge did NEA attempt to solicit accounts then being serviced by King?

"A. I can't recollect, I don't remember any cases.

"Q. Do you know whether or not NEA adhered to the so-called truce you spoke about in the period immediately after the meeting?

"A. I don't know."

I am now going to Topic 13, which is evidence offered to show that the agreement between NEA and King not to compete was implemented. I am talking now about Exhibit P-35, 1468 which was formerly Document 24. It is a document that bears the title, "Sales and Promotion Department Budget—1956." It bears the initials WHB. It has been stipulated that William H. Borklund was Vice-President of NEA from July 27, 1955, to January 1, 1961.

Mr. RAICHEL. You are offering that against NEA only?

Mr. BERNSTEIN. We are offering it as against NEA and also as against—at this time we will offer it against NEA, and re-offer at a later time as against Greater Buffalo.

Mr. STEVENS. No objection from NEA.

The COURT. Received.

(Thereupon, Government's Exhibit P-35, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the paragraph about halfway down the page. It says: "To explain this a bit further, it should be pointed out that our sales force has actually been restricted on 'things to sell' from our situation three years ago." Paragraph two: "The sale of Buffalo Color Press takes us out of the readyprint business to the extent we can no longer compete for runs controlled by King Features. In this respect, not only is our readyprint business growth restricted, but indirectly this will also cut down on Sunday comic sales, because we have invariably added pages to these tailor-made sections whenever we took a run away from our competition. There is no question that both the sale of Acme and Buffalo Color Press was an excellent move financially for NEA. However, the fact remains

that it did cut down on the opportunities our salesmen had to increase gross business."

The COURT: That I don't understand at all. Can you give me the Government's view of that?

Mr. BERNSTEIN: The Government—

The COURT: "There's no question that both the sale of Acme and Buffalo Color Press was an excellent move financially for NEA." What do you understand that to mean?

Mr. BERNSTEIN: The Government contends NEA profited by that arrangement, it was a good deal, as far as NEA was concerned. As NEA said, "However, the fact remains—"

The COURT: I don't understand what the affiliation was between NEA and Buffalo Color Press.

Mr. BERNSTEIN: Buffalo Color Press was a subsidiary of NEA. NEA sold it. Buffalo Color Press was the printer for NEA. NEA was doing its own printing through its own subsidiary. It sold that subsidiary to the Greater Buffalo Press and made the arrangement that Greater Buffalo would do the printing, and give NEA a royalty in lieu of it. NEA then made the deal with King. This document shows that it implemented the agreement that Mr. Nicht testified he made with NEA representatives.

The COURT: All right.

Mr. STEVENS: May I point out to the Court that Mr. Borglund's meaning of the document is shown on page two in his recommendations. He said, "In our recommendations for 1956 I have a number of suggestions which we believe will strengthen the service and perhaps put us on the trail toward doing a good job next year. 1. That we actively search for some new 'big ticket' things to sell." In other words, not having the printing to sell, printing from Buffalo Color Press, as sales manager he was looking for something for his salesmen to sell. That is the context in which he used the language he did.

Mr. BERNSTEIN: P-36 for identification, Your Honor, formerly Document 28, is another sales report from NEA, dated January 19, 1956, prepared by one of its representatives, and it is offered at this time as against NEA, and will later be offered as against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: All right, received.

(Thereupon, Government's Exhibit P-36, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the fifth paragraph down: "I was asked by Carmage Walls while in Alabama last week whether we would be interested in printing the comic section, and if we were, he would give us the contract on July 1st. He also asked me to submit my price for the printing of this section, and whether we would supply a 1473 number of comics free of charge in the event we were awarded the printing contract. Since that time, I have discussed this with WHB——" stipulated as William H. Borglund—— "and Earl Anderson——" stipulated as Vice-President of NEA—— "who state that under our new arrangement with GBP we will not attempt to take any current contracts away from KFS——" this is stipulated to mean King Features Syndicate—— "therefore at my meeting today I advised the group that due to the shortage of newsprint we would be unable to supply them and for that reason there was no reason for giving them a printing price."

The COURT: Let me see that again?

Mr. BERNSTEIN: That is third from the last paragraph, Your Honor.

The COURT: All right.

Mr. BERNSTEIN: The Government contends for this document that because of the truce, as Mr. Nicht described 1474 it, this shows the affect on the salesmen. The salesmen, when asked for a quotation by a company presumably that was being serviced by King Features Syndicate—naturally he didn't tell them about their agreement not to compete with each other's customers—he advised that due to the shortage of newsprint he would be unable to supply them, there was no reason for giving a printing price. P-37 for identification, Your Honor, formerly Document 253, another sales report dated January 11, 1956, NEA representative R. C. Whitehead. This is offered in evidence against the defendant NEA, and reserve the right to offer it later as against Greater Buffalo Press under the co-conspirator rule.

Mr. STEVENS: No objection from NEA.

The COURT: Received.

(Thereupon, Government's Exhibit P-37, previously 1475 marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the next to the last paragraph: "Although we were asked, just recently,

work up a new readyprint for them——"—apparently referring to the newspaper at the top of the report, the Tupelo, Mississippi Journal— "including our comics exclusive of the Memphis use, we are now confronted with the fact that we cannot take any business away from KFS——"—stipulated as King Features Syndicate—"on account of GBP——"—which is stipulated refers to Greater Buffalo Press—"when I was in Tupelo this week, I had to say to the publisher that due to the shortage of newsprint we were unable to attempt to give him a printing price at this time." The Government makes the same contention with respect to that documented, as further evidence that the contract was implemented or the understanding was implemented. P-38, formerly known as Document 115, a memorandum dated March 21, 1957, purporting to be a sales report with respect to the newspaper, the Jackson, Mississippi State Times.

Mr. RAICHLE: Offered against NEA?

Mr. BERNSTEIN: Offered against NEA, subject to reserving the right as against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-38, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Court's attention is invited to the fourth paragraph: "Robinson entered a cancellation with KFS"—stipulated as King Features Syndicate—"some time ago for their Sunday color comic readyprint, and I learned while here that Jack Hornaday had been in to see them offering them a very attractive deal with the usual advertising rebate, and Robinson asked my opinion and also asked if I would give him a quote on printing the color comic section for him. I explained to Robinson that the Jack Hornaday deal was not a good one for him, and went on to explain that we were now working on a plan under the name of Dixie Color Comic Network, which would be much better for him, therefore, Robinson said he would drop the idea of discussing it any further with Hornaday. Since we are in agreement with KFS not to take each other's present printing contracts, I explained to Robinson that his present contract with King, of \$16.50 per thousand for an eight-page color comic section was a very good one indeed, and I padded my price to the point of saying that I could not afford to sell him a

1478 section for less than about \$22 per thousand, so Robinson said he felt he would renew his contract with KFS when they come to see him." Document P-39, formerly known as Document 30, appears to be a memorandum to Bob Whitehead of Atlanta, stipulated as having been a sales representative of NEA, and bears the initials HWW, stipulated that the document was prepared by or under the supervision of Herbert W. Walker. It is stipulated that at the time of this document he was Vice-President of NEA. P-39 is offered in evidence as against NEA, subject to a later offer against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-39, previously marked for identification, was received and marked in evidence.)

1479 Mr. BERNSTEIN: "Dear Bob: I have just caught up with your report of March 21—" the Government contends that refers to P-38, the sales report that has just been read which contained the words that "I padded my price to the point of saying that I could not afford to sell him a section for less than about \$22 per thousand—" this letter says: "Dear Bob, I have just caught up with your report of March 21 on your call at the Jackson, Mississippi State Times. This paper has a King eight-page color comic section at \$16.50 per thousand, and you report that you told Robinson our price probably would be around \$22. It's all right to be high in cases like this, but I don't believe I would put the figure up as high as you did in this case. More like \$1 to \$1.50, I would say. Some suspicions might be aroused on the higher quotations."

The COURT: I think we will stop for the night and
1480 resume at ten in the morning.

Mr. BERNSTEIN: I have three more documents to clean up this topic.

The COURT: Hold those until ten in the morning.

Mr. BERNSTEIN: Yes, sir.

(Thereupon, the court was in recess at 4:25 p.m.)

1481 Proceedings resumed October 14, 1965, commencing at 10:00 a.m.

The COURT: Yes.

Mr. BERNSTEIN: May it please the Court, with respect to Exhibit P-40 for identification; P-40 is the letter from J. W. Koessler, President of Greater Buffalo Press, Inc., dated January 26, 1956, addressed to Mr. Frank J. Nicht, the Government offers the exhibit in evidence.

Mr. STEVENS: The exhibit has heretofore been admitted, P-40, I believe.

Mr. BERNSTEIN: I'm sorry.

CLERK OF THE COURT: P-40 is in evidence.

Mr. BERNSTEIN: With respect to P-41, formerly known as the Document 114, a letter dated February 9, 1956, from J. W. Koessler, President, to Mr. Earl Anderson, Buffalo Color Press. The Government offers the exhibit in evidence.

Mr. STEVENS: NEA objects to this document.

Mr. BERNSTEIN: It has been stipulated, Your Honor, 1482 that Mr. Earl Anderson, at the time of this document, from April 2, 1953, to June 11, 1956, which covers the period of time when this document was addressed to him, was Vice-President of Buffalo Color Press, Inc., and the relationship between Buffalo Color Press, as a subsidiary of NEA, has already been presented in the record.

The COURT: You have no objection, Mr. Raichle?

Mr. RAICHLE: No, except as to relevancy, materiality.

The COURT: Overruled. Received.

(Thereupon, Government's Exhibit P-41, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Government invites the Court's attention to this exhibit: "Dear Earl: I called Frank Nicht on the Rome, Georgia, matter Tuesday and he sent me this wire today.

1483 'Rome, Georgia, contracts were negotiated last year embracing supplement printing and Feature Budget.' I don't know if this is within or without the rules but I sure wish to hell this poaching would stop." The Government claim for this letter is that this letter indicates and further confirms the testimony of Mr. Nicht that he had met with NEA at Greater Buffalo's request and had made arrangements with them to respect to each other's customers, rather as a truce, and this confirms that. And the letter means to the Government that Koessler phoned Frank Nicht with respect to a newspaper in Rome, Georgia, and that Mr. Nicht replied to him the quotation indicating that Nicht claimed that account was his, and Mr. Koessler's reply, "I don't know whether if this is within or without the rules——" meaning he doesn't know who is sup-

posed to have it under the arrangement or agreement 1484 they had—"I sure wish to hell this poaching would stop," meaning he wishes that this breach of the agreement would stop. That is the Government's contention for this letter.

Mr. RAICHLE: Now, only because counsel has seen fit to attempt to interpret the letter, and, we submit, misinterpret the letter, let me put on the record at this time an answer to that so Your Honor can deal with the question of competence and relevancy when you get to it, and have this on the record. This will not be long, and not be repeated, but it is with your permission I am going to answer him?

The COURT: Yes.

Mr. RAICHLE: At a time when the Government charges that King Features was tying in the sale of printing with the sale of features—King Features wouldn't sell its features unless the printing was also bought through King Features—NEA and King Features met at this Beverly Hotel, NEA could 1485 complain about the illegal conduct on the part of King. claimed so to be by the Government, and the rules that he is talking about are the rules of law, not any agreement made by King Features Syndicate and NEA. From Greater Buffalo Press point of view, take the undisputed evidence in the record he put in—by "he," I mean my learned adversary—the testimony of this man Nicht, in highly selective portions at page 81 and 82 the following occurred, this is what he read to Your Honor—a truce between NEA and King Features was so discussed at that meeting, not any truce between Greater Buffalo Press and either of them. Greater Buffalo was favored with the business of both, what difference did it make to Greater Buffalo whether King Features or NEA took business one from the other? Now then, at page 82, and I think this is very important, Your Honor: 1486 "Q. Was anything said at that meeting in regard to Greater Buffalo?"

Mr. BERNSTEIN. What line?

Mr. RAICHLE: Number 2. Number 1 says: "Nicht, direct."

"Q. Was anything said at that meeting in regard to Greater Buffalo?"

"A. I don't recall that.

"Q. But at least NEA and King were not to solicit each other's accounts?"

"A. That was the intention."

Now, that is so important to us because it sheds light on these alleged documents or records or writings among the personnel of NEA to which we were not a party and knew nothing.

Whatever was said at that meeting on the subject of a truce related only to NEA and King, born out of the fact that King was violating the law and tying in the sale of features with the sale of printing, and presumably damaged NEA in that regard and, naturally, they were protesting. He might say and, "Why didn't they protest to the Government?"

1487 Somebody protested to the Government here, and here we are, eight years later, with the blessing of the Government, King still ties in features and the sale of printing, even under this consent decree which the Government blessed. I am not going to repeat it.

Mr. BERNSTEIN: I object to the remarks, Your Honor, and move they be stricken, that is, "with the blessing of the Government King Features ties in——"

The COURT: I consider that your remarks are in the nature of summation, explaining what certain exhibits are to me. If we followed the ordinary pattern of taking the evidence, you summarize. This is the type of summation that I think is designed to meet your claim.

Mr. RAICHLER: That is right.

Mr. BERNSTEIN: I was taking exception to the remark "with the blessing of the Government."

The COURT: That is counsel's view. Overruled.

1488 Mr. RAICHLER: I wanted Your Honor to have in mind our contention and the undisputed evidence. The only talk about the truce was between those two people. That cannot relate to the conspiracy charged, for if it does, then we are not a party to the conspiracy charged. That is the trouble with this case; it's quicksand. To make documents business records, if they were such, admissible, it would have to be documents or statements made during the course of the conspiracy charged, not some other conspiracy, and during the course of a conspiracy which included as a participant the one or ones against whom it is offered, after independent proof has been made of such conspiracy. What I have just read, I respectfully submit, clears up all the innuendo that he would like to import into this case by the documents that he was reading yesterday, and dispels his claim and explanation to Your Honor about this document. Now then, even more important than
1489 the testimony of Nicht that has been offered by the Government, that this arrangement, whatever it was, truce, which the evidence shows and will continue to show, was more

honored in the breach than the observance by both of them, is the fact that the complaint itself charges on page 9 under paragraph C: "In or about November 1955, representatives of King and the co-conspirator Eastern—" that isn't us—"held a meeting in New York, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern continued this agreement or arrangement to the date of this complaint." The point about reading that is this: Here 1490 is the ogre in their absence, here is the predator, King; the wrongdoer, King, seeking to dominate through this illegal tie-in, meets on the one hand with NEA and establishes or claims to have established something which Nicht happily describes as a truce. Then the predator, the wrongdoer, King, meets with Eastern and evidently works out some such arrangement to which we were not a party and didn't know. He goes on in D and E, and so forth. But my point is, and I hope at least I have made it, in answer to his contention, is that he has a contorted construction of the letter; it doesn't mean what he claims it means; it couldn't because of the arrangements I have just mentioned, and the documents yesterday have no bearing or relation to us.

Mr. STEVENS: I would like to speak on behalf of NEA as well.

Yesterday when Exhibit 17 by the Plaintiff was offered 1491 and Your Honor accepted it with the qualification that it had to be tied into NEA later, Mr. Bernstein said that such Exhibit 17 shows that the exclusive commitments between Greater Buffalo and King Features in fact continued. By exclusive commitments, I mean, Your Honor, that at that time Mr. Bernstein was saying that King Features and Greater Buffalo had an arrangement by which one would be the exclusive sales agents and the other would be the exclusive printer. Now, according to the testimony of Mr. Nicht, it was some time in November of 1955 that a truce, as he described it, upon soliciting business from each other's customers was arranged between NEA and King Features. The duration of that truce—a word which in and of itself connotes a most temporary suspension of hostilities and a contemplated resumption of hostilities—the duration could not possibly have 1492 extended beyond January 17, 1956, if the theory which Mr. Bernstein urged so strongly to the Court in seeking to obtain admittance of Exhibit 17 into evidence is valid.

Because he said that this letter was offered to Your Honor to show that the exclusive commitments—one to be exclusive sales agent and the other to be an exclusive printer—continued despite the fact counsel had taken out of the draft written agreements which were passing back and forth, not between NEA and anybody else, but between King Features and Greater Buffalo.

Mr. BERNSTEIN: Later on this morning, Your Honor, I will have occasion to make a motion with respect to the evidence, and during that time the Government will respond to the remarks made by counsel at this time. I won't take up the time right now. P-42 and P-43 for identification are now offered in evidence. P-42, formerly known as Document 31, and P-43, formerly known as Document 29.

Mr. RAICHLE: No objection to 42.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-42, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: May the record show that P-42 and 43 are in evidence?

Mr. RAICHLE: I didn't say 43.

Mr. BERNSTEIN: I'm offering them both. P-42, Your Honor, is a letter from Earl Anderson of NEA to Kenneth Koessler of Greater Buffalo; and P-43 is a letter from Mr. Koessler to Earl Anderson. The Government contends both of these letters refer to the same subject and are related.

The COURT: These have both been offered.

Mr. RAICHLE: I have no objection.

The COURT: I haven't heard from Mr. Stevens.

1494 Mr. STEVENS: I object to P-43, certainly nothing in here, it seems to me, shows a reply to P-42.

Mr. BERNSTEIN: The words "Fargo and Sioux Falls."

Mr. STEVENS: They are on a lot of maps, too.

The COURT: If that is the basis of your objection, I will overrule it. The question of the affect of the exhibit, you may argue that to me at a later date.

(Thereupon, Government's Exhibit P-43, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-42, Your Honor, is a letter from Mr. Anderson of NEA to Mr. Koessler, dated March 4, 1960: "Re The Sioux City (Iowa) Journal. Dear Kenneth: You had been

aware of the difficulty that we have had in holding the run at the Sioux City (Iowa) Journal due to the low quotations from King Features Service." I skip the next line.

1495 "In order to hold this run, after taking full advantage of the fine service we have given them over the years and every possibility in the baggage rate, we had to make a quotation here that brings your printing rate to \$15.82 per thousand, f.o.b. Buffalo. I know you and Walter don't like this one, and I can assure you that it is just as tough on us. Although King made this quotation last Fall, we have kept the rate up until the expiration of our contract, but now the change will have to be made effective with the release of March 13, 1960. We now have this protected by contract for two years. The other bad news is that we now have a cancellation in from the Fargo (North Dakota) Forum due to a quotation from Mr. Rabinow that seems to be based on about the same pricing." P-43

is a letter from Mr. Koessler to Mr. Anderson dated 1496 March 15, 1960, eleven days later. He said: "Dear Earl:

Frank Nicht has been in the hospital for the past three weeks. When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation. Fargo and Sioux Falls—" I digress, those are the two letters—those are the two papers referred to in P-42, the Government contends—"—go together as I understand it and the combined circulation is in excess of 100,000. This job should present no problem competitively. I suggest you destroy this letter." It is the Government's contention that this—

Mr. RAICHLE: I don't think he ought to state his contention each time.

The COURT: What you are doing here, in effect, is making a summation of the nature and quality of your proof and if we do this, it is going to provoke, in each instance, a 1497 response from either or both defendants of their views on the same subject. Now, I expect, in due course, to give you an opportunity to review your case in the light of all the evidence, in the way of a summation to me instead of a jury, and I do not object to this except for the time that is going to be consumed. It is going to be repeated.

Mr. BERNSTEIN: No, this is just being done with one or two documents in order for the Court—

The COURT: This is the last one you have in mind?

Mr. BERNSTEIN: Yes, sir.

The COURT: All right. Go ahead, I'll listen to the response and we'll go ahead.

Mr. BERNSTEIN: The Government contends it is related to what was said before, that this continued up through March 15th, 1960, which is the date of the letter. That is all I wanted to point out at this time.

1498 Mr. RAICHLE: Well, I suppose you can draw something sinister. May I see that just a second? It says: "I suggest you destroy this letter." I suppose Mr. Koessler would have been happy to have Mr. Nicht see it, he wants him to think it didn't want the Government to see it.

Mr. STEVENS: If the Court please, for NEA; this letter indicates the kind of telescoping of time of which the Government is persistently guilty in antitrust matters. They find something which is a kernel of the violation in the mid 50s; they find a letter in 1960 with the sentence that Mr. Raichle referred to in it, which may have been written for a large number of reasons, and they say, "Ah! This must be related to the kernel of the conspiracy," which they found five years earlier; and more than that, that the policy being pursued, which had to be Frank Nicht's policy because it was
1499 Frank Nicht, the Hearst man, to whom Koessler was going to talk, that his policy is just breaking down the market. Now, there simply is no necessary connection between the meeting in the Beverly Hotel, which Nicht put in the Fall of 1955 when a truce—and I repeat, a word which implies fully a most temporary arrangement—and the policy being pursued in March of 1960.

Mr. BERNSTEIN: Now, if the Court will bear with me for perhaps five minutes, no more, I would like to take this opportunity to answer some questions that the Court raised yesterday concerning this matter; and I respectfully submit that by taking this five minutes at this time, this will put the contentions of the Government in focus in relation to the documents and it will assist the Court, as these documents come in, in having a better understanding of what it is the Gov-
1500 ernment is trying to do, and that it has a genuine effective and sincere purpose and a valid case. Yesterday the Court asked me a question that I was not prepared to answer, but referring to 1954, and in discussions about the arrangement between King and Greater Buffalo. The Court

made inquiry as to whether King hoped to get its printing done cheaper by Greater Buffalo. Implicit in the question—

The COURT: Implicit in the question in something you said this morning; what did Koessler care about NEA's and King's row if they had one?

Mr. BERNSTEIN: Precisely; this is the point to which I want to address myself. I believe it goes to the heart of the case. An understanding of this will permit the Court to understand what the Government is attempting to establish here in this case. The answer is, Koessler did have something to gain by it. But more basic than that, the Government concedes that 1501 then in 1954, and now, that Greater Buffalo is the most efficient color printer. The Government concedes that Greater Buffalo Press is a genius for efficiency and economy, for reducing costs, for organization, and by this lawsuit the Government is not seeking to enjoin that talent. It is not seeking to enjoin Greater Buffalo Press from exercising that talent. It is seeking to protect the right of Greater Buffalo, as Mr. Raichle said here this morning, against the use of tie-ins; seeking to protect the right of Greater Buffalo to get a larger share of its market by its own talent and without combining with competitors to do it. Now, Greater Buffalo had and has the right to set up its own plant in Lufkin, Texas; any new plant that it wishes to open. It had the right in 1954, or prior thereto, when the Government charges that King and 1502 NEA were tying in features. It had the right not to be a victim of that tie-in to seek to get printing. The law, by this lawsuit, is trying to protect it in that right by eliminating the tie-in. At the same time, the law does not permit Greater Buffalo Press to take the law into its own hands and join in with the Syndicates doing the tying in and taking the advantage of their power. Let me spell out for a moment; the Syndicates have salesmen who visit newspapers and sell copyrighted features. By the copyright, the law gives them a lawful monopoly to that feature, that is all, and the Syndicate has the right, if it chooses, to use those salesmen at the same time to sell printing, printing services, but printing that it does in its own printing plant or printing done by a subsidiary or printing done by any commercial printer that it chooses 1503 to engage for itself, it has that right. The law does not give each one of these Syndicates the right to say to a newspaper, "If you take my printing you get the features

free or you get it cheaper in one package, take this thing tied up together." It doesn't have that right. This lawsuit is seeking to prevent. The Government submits that the judgment which this Court has signed, which Your Honor has signed, and which counsel has characterized as the blessing of the Government, prohibits King Features from tying in and makes certain provisions that will go into effect if the Court grants the relief sought by the Government for dissipating the monopoly of Greater Buffalo. Those provisions make it even more stringent, to prevent a recurrence of the tie-in, which the Government seeks to outlaw. Getting back to Greater

1504 Buffalo. Greater Buffalo, being a victim of tie-ins, instead of using the law's remedy to prevent such tie-ins, joins up with the lawbreaker and takes advantage of that tie-in by getting King Features to act as its sales agent. Now, turning the clock back to 1954, or earlier, the Government would not be in the courtroom today—if the Court please, the colloquy of counsel interrupts my train of thought.

Mr. RAICHLE: I'm sorry.

1505 Mr. BERNSTEIN: If we turn the clock back to 1950, or 1954, the Government would not be in this courtroom today had King Features merely transferred runs that it was having printed at International, a competitor of Greater Buffalo in the printing, and given the business to Greater Buffalo as a printer. That would be American competition; it had the right to seek to get a better price from Greater Buffalo rather than the price it was paying to International. But that it not what this case is about. This case charges that King and Greater Buffalo agreed that King would keep its printing in International and Greater Buffalo would keep its printing in Greater Buffalo. Now, I think that it would be simple to see the violation here if, instead of King having its printing done by International, it actually did the printing itself. There it would be a printer and a seller of printed supplements. If Greater Buffalo sold its printing, it would be in competition with King and any agreement between them to allocate customers—"You take this one, I'll take that one, I'll give you a kickback on this one if you don't bid"—any such agreement would be obvious. It is more difficult to see here because Greater Buffalo doesn't do its printing; instead, it goes to a

commercial printer, International, and has its printing done for it. From the standpoint—

The COURT: Greater Buffalo?

1506 Mr. BERNSTEIN: King; excuse me. I misspoke.

The COURT: King goes to another?

Mr. BERNSTEIN: King goes to International under an arrangement with International. For all intents and purposes, International is the captive printer of King. It has a contract it won't print for anybody else, but print exclusively for them, and King will turn virtually all its business over to it except for the West Coast business, which they approximated was about 75%. For the purpose of competitive aspects, it is just the same as if King owned the printing plant and made the arrangement with Greater Buffalo, or made the arrangement because International owned the plant, that doesn't change it. The Government asserts, and makes a strong representation, that had Greater Buffalo achieved 100% of the market of color printing done for newspapers that don't print their own,

1507 by the genius and talent and organization that it has, the Government wouldn't be in this courtroom today and couldn't be in this courtroom today. Our American free enterprise system permits somebody to get complete control of the market if he does it by building a better mousetrap, a better product, but the law, the antitrust law, does not permit this to be done by combining with a competitor to do it. By the same token, International was free to get out—strike it out. The stockholders of International were free to sell their interest in International to anyone they wanted, with one exception. What was the exception? The exception was Section 7 of the Clayton Act. Section 7 of the Clayton Act acts as no restraint on International; it does act as a restraint on who is going to buy International because Section 7 of the Clayton Act says

no corporation shall acquire the stock of another corporation where the effect might be substantially to lessen competition in any line of commerce in any section of the country. Obviously, under such a law it doesn't permit the leading competitor to buy out the other leading competitor, except if International had been bankrupt and there was no other purchaser, then that could be done. That isn't this case. This case, if International was not printing economically, if

International wasn't making any money, it sought to sell out, International would have to find a buyer, have to find a buyer that met the test of Section 7, that wasn't prohibited from buying it by reason of Section 7. That meant that King, the Syndicate, was on the spot. It would have to do something; it would have to do something in competition with Greater Buffalo. The law prohibited Greater Buffalo from making the acquisition. King would have to make a decision. King had a lawful right to get out of the printing business, it could have remained in the Syndicate business. If it determined to remain as a printer and International determined to sell, then King had to do something else; either finance the transaction or it either had to arrange another customer, or to buy International itself and then be the kind of competitor that I described initially, where it was selling the features and it was also selling the printing, and the law would prohibit it from using its power as a copyright owner of the features from getting a competitive advantage on the printing by tying it in. But where does Greater Buffalo's offense come in? Being a victim of this tie-in, Greater Buffalo made an error in judgment. It had and it has the ability to compete, out-compete anyone else. It has this marvelous talent for efficiency and economy, reducing costs. But it chose a different road, it chose to make false promises to King, that by promising that King would be the sole sales agent for Greater Buffalo, nobody else would be in the picture, Greater Buffalo would just be the printer, then King would be the exclusive sales agent, so Greater Buffalo would get the benefit of King's tie-in of the copyrights. Greater Buffalo joined in to get the advantages of that illegal activity rather than being in the role of the victim or that rather than seeking the law's help to stop it. Now, after gaining the power through these false promises, Greater Buffalo then double-crosses King and it uses NEA as its Syndicate, again using the tie-in power that NEA has, and by getting NEA and King together—the last exhibit put in evidence answers your Honor's question directly as to what did it matter to Greater Buffalo whether NEA and King were competing, knocking their brains out. I read from P-42, the letter from Earl Anderson to Kenneth Koessler, where he complains about the low quotations that King has been charging, and he said: "We had to

make a quotation here that brings your printing rate— Greater Buffalo Press's—"to \$15.82 per thousand, f.o.b. Buffalo. I know you and Walter don't like this one, and I can assure you that it is just as tough on us." Greater Buffalo's advantage and interest is, if two salesmen are fighting each other by offering lower prices, the only affect is that it is going to get lower printing prices; has to come out of the printer; whereas the price will be maintained and stabilized if the newspapers are led to believe when NEA comes in, and the newspaper in the good American tradition wants to get some

1512 competition—that is not a dirty word, seeking a better price for itself, being able to provide efficiency in its plant, so that the advertising rates can be sold cheaper, so that the public will get the benefit of competition, that isn't a dirty word—the newspaper trying to get that from NEA is misled into believing when King comes around, or vice versa, and NEA says, "We have no newsprint," it's a sham, or NEA says, "Our price is X dollars more than King's price." The newspaper believe this is legitimately and genuinely being quoted. They are being misled and cheated, really. Now, the Government claims that had it not been for Greater Buffalo's conduct in making its arrangement with King, assuring it it would be the exclusive agent, King never would have permitted Greater Buffalo to make that acquisition. It had two simple ques-

1513 tions open to it to stop it, in addition to what I told

Your Honor the other day. One, to bring an action under Section 7 of the Clayton Act for an injunction to enjoin the acquisition. That was the simplest thing it could have done. Many people hate to complain to their Government because they think this stigmatizes them. This is not the case. The Antitrust Division's doors are open every day to receive complaints. This doesn't mean that because somebody comes in and makes a complaint that without any inquiry, without any evaluation, the lawsuit is immediately started. It is the duty of every victim of any unlawful offense, including business offenses, to report that offense to the proper authorities and not to take the law into its own hands and seek by self-help to get the benefits of the unlawful contract. Now, the importance of this case, Your Honor: I think it is important for the general business community to reaffirm some other principles

1514 we have. The Sherman Act has been on the books since

1890. I listened to an interview this morning with former President Eisenhower in which he made a plea for our return to the principles of decency upon which this country was founded, and although the Sherman Act has been in effect since 1890, seventy-five years, that principle of free enterprise is just as valid today, and it is so essential to protect that principle. We see Iron Curtain countries where Government control and State-regulated economies direct how business is to be run, direct who gets which customer, or who supplies which newspaper, and who does not. It is obvious to everyone in the courtroom, it is almost ridiculous to make the statement, how un-American that conduct is. But we fail to recognize too often how just as improper, how just as important it is to prevent combinations of competitors from controlling an industry, combinations of competitors from controlling the opportunity of newspaper and consumers to buy in a competitive market. That is what this case stands for. I have another question that Your Honor asked but I think, Your Honor, it goes to another subject. So I will pause at this time and await Your Honor's disposition.

Mr. RAICHLE: If Your Honor please, we seem to be proceeding differently than I thought we would. I could not, nor could Your Honor expect me to, subside while counsel would leave unanswered that statement of his. Trying to make my remarks in brief, let me point out one or two things: The first is self-evident. If I heard counsel correctly, he said we were the victims, that is, Greater Buffalo was the victim of misconduct on the part of King. Later he said we double-crossed King. At one point he said that we were to be criticized for not complaining to the Department of Justice. At another time he went so far as to make a representation that this proceeding against us and the other defendants is really for our own benefit, all of which confuses me and drives me back to the record. If there is one thing that stands out like a pikestaff in this case is that the competition between Greater Buffalo Press and King Features, and NEA, was not only active and fierce, but it was almost vicious in spots. Prior to 1955, or the time of the acquisition by Greater Buffalo of International Color Printing Company, Greater Buffalo Press from its humble beginning had grown by reason of the efficiency and the ability to turn out what he calls a better mousetrap, to the

point where it was taking printing business away from
 1517 King, from NEA, and was nibbling at the entrench-
 ments of King. Greater Buffalo had no features to sell;
 it had printing to sell. NEA sold the package, the features and
 the printing, and the printing was done at International Color
 Printing Company. The competition was not between Inter-
 national and Greater Buffalo; it was between Greater Buffalo
 and King Features on that phase of it, and NEA on another.
 The time comes, as the evidence in this case shows, when the
 family which owned International Color wanted to sell the
 stock. King through its dominance of International had driven
 the price of printing down to the point where it was almost
 impossible for International Color to survive. One of these
 documents make that clear, the evidence in the record
 1518 makes it clear, and the fact is established that Inter-
 national Color was completely beholden, a captive plant,
 as counsel describes it, of King. Then International is for sale.
 Nicht would like to have King Features buy it. Hearst buy it,
 but he is turned down in that respect. Hearst doesn't want to
 put up the money; Hearst has got a good thing, grinding down
 the owners of International, making a handsome profit every
 year, taking it out of their hides, if I might use the expression,
 so they look about elsewhere to sell—I mean the owners of
 the stock of International Color Printing. In the course of time
 Greater Buffalo Press acquires the stock of International Color
 Printing. At or about that time, as the evidence shows and as I
 cheerfully admitted, in fact, asserted in my brief opening, there
 was a flirtation on the part of King and Greater Buffalo, ini-
 tiated by King, whereby King wanted to become the
 1519 exclusive sales agent. But if there is one fact that stands
 out above all others, that flirtation died aborn, the nego-
 tiations did not ripen into a contract, and King never became
 the exclusive sales agent of Greater Buffalo Press. I don't see
 how counsel, with a straight face, could assert it did. It never
 became a sales agent of Greater Buffalo Press. The transaction
 will be laid out in detail, the method of doing business will be
 clear. The complaint of King, oft repeated, is that the competi-
 tion of Greater Buffalo Press has been harmful, and nothing
 could illustrate better the inconsistent and the confusing char-
 acter of the claims asserted by the Government in this case than
 this brief statement which, with Your Honor's permission, I
 will read from Mr. Feldman's remarks made to this Court on

July 7, 1961, four years ago, when the Government was seeking from Your Honor a temporary injunction. I read it against the background of counsel's statement to Your Honor made a few minutes ago, that King became the exclusive sales agent of Greater Buffalo Press and that Greater Buffalo Press and King Features were in a mad, stifling competition, known not only reputative but actual. This will show beyond every venture of a doubt that the competition was so keen that the Government felt called upon to protect King against such competition. Here is what Mr. Feldman said: "Now, with recent times Greater Buffalo, which of course controls International, has gone out and displaced King Features Syndicate, by displaced, I mean King Features would have an existing contract for printing for the publisher and they in turn would get publisher's printing from International. Obviously, Greater

1520 Buffalo knows and controls the price upon which International sells the color comic supplements and Greater

1521 Buffalo can go out, instead of quoting the price to the Syndicate, which has to make a profit, quotes the same price offered to the Syndicate to the particular publisher." That relates to the letter that we talked about yesterday where the words "competitive price" was used. The claim and the complaint of King Features has been that we do not favor them, that we don't give them one price and the publisher of a given newspaper another. We compete with King, and we compete with NEA, and NEA compete with each other. Now, I will admit that consistency has not been one of the lamps of advocacy, I think that applies to legal contentions. I think the law allows that in the Hornbook way, inconsistent claims, inconsistent defenses, but never an inconsistent contention about the facts. The facts are the masters of us all, and the spectacle

1522 of the Government in one minute claiming we had to be protected against King and the action is for our benefit, and the next minute complaining—let me say before that—asserting that the essence of the case, asserting it at other times that the essence of the case is unconscionable or illegal agreement between ourselves and King and then standing and explaining we double-crossed King by indicating we would make such an arrangement, and then we didn't make it, and he seems to complain now that we didn't carry out some arrange-

ment which previously he was condemning us for allegedly carrying out. He can't have it both ways on the facts. Confusion reigns supreme, it is compounded, I have lost track of the case.

The COURT: One thing I would like to have a remark from you on, Mr. Bernstein, if you will; I get the impression—I don't know where the proof lies—that International Color was in real distress, that, as Mr. Raichle said, one of the 1523 reasons for this real distress was that King had ground down the price where the stockholders no longer saw an advantage in retaining it. What do you claim the record is with respect to that? I have the impression that the image you paint is that the sale was only made, not because of the depressed price, a depressed situation of the stockholders, but, in fact, they were under the hammer by NEA and this combination of interests to force this sale.

Mr. BERNSTEIN: That isn't precisely the Government's—

The COURT: What about the first contention of Mr. Raichle, if there is evidence that indeed the stockholders were dying on the vine because they couldn't make a go of things; that is coupled with this in my recall—I don't know the truth of this—but I understand that when Greater Buffalo 1524 bought that plant they bought something they were not interested in in the way of equipment because it was an old, worn-out situation. I am talking about my recall of the argument that the big presses in there, which I don't remember the description of, was from Mr. Koessler's point of view a shaky item, and that indeed they had no real interest in the physical equipment of that plant. I want to hear what you understand the proof was concerning the success of that plant and the prospects of the stockholders at the time of the sale.

Mr. BERNSTEIN: Yes.

The COURT: From the proof in the case.

Mr. BERNSTEIN: Yes. Will you excuse me thirty seconds until I check up on what is in the evidence?

The COURT: I think you understand to me that is of some importance. If you have got something on the market that is cheap enough and unsuccessful and it is being offered 1525 for sale, that is one thing. If you acquire something by reason of pressures due to a combination of interests all focused on that organization, that, of course, could be something else.

Mr. BERNSTEIN: The Government contends there is a third thing. I will answer Your Honor's question directly. The record shows that they were—International was paying dividends to its stockholders, was paying its income taxes on profit, that while its revenue was diminishing, while it wasn't doing as well as it would have liked to have done or as well as any businessman might objectively say it should be done, it was nonetheless not bankrupt, not insolvent. The second point is, does the Government contend this sale was brought about solely because of the pressure of King? I believe Your Honor said NEA.

The COURT: I didn't say anyone. I said the combination of all three for some sinister purpose.

1526 Mr. STEVENS: You don't claim NEA had anything to do with that?

Mr. BERNSTEIN: I do not.

Mr. RAICHLE: You are saying the Government doesn't claim that?

Mr. STEVENS: Doesn't claim NEA had anything to do with the transaction.

Mr. BERNSTEIN: The Government doesn't claim it, that is correct.

Mr. RAICHLE: You don't claim there was any pressure from us to accomplish this?

Mr. BERNSTEIN: That's what I'm about to explain. The Government's contention is that you had a combination of circumstances there, nothing as the result of any one single thing, everything has to be viewed in the context, in the circumstances in which the companies found themselves.

The COURT: One of the things, from what I know and I think I have learned, is that that plant was in a depressed area?

Mr. BERNSTEIN: Correct.

1527 The COURT: What was this business of the Labor Union showing a vivid interest in this case? I have never understood that. Tell me why they were so interested?

Mr. BERNSTEIN: The Labor Union was interested at an early part of the case—I regret this has confused the issues before this Court now—

The COURT: There, there, like Senator Sparkman was allegedly somewhere; what was the concern of the Labor Union over Sylacauga—not Sylacauga—over Wilkes-Barre?

Mr. BERNSTEIN: The concern was that the Court imposed a temporary injunction and the plant could not open.

The COURT: They were sitting here on the application for the temporary injunction. There were labor people here then.

Mr. BERNSTEIN: They were concerned that if the injunction were removed that Greater Buffalo would transfer printing runs from Wilkes-Barre to Sylacauga, Alabama, and they 1528 were concerned they would lose jobs in Wilkes-Barre.

The COURT: Is Koessler going to fold up a half million dollar investment?

Mr. BERNSTEIN: The Government does not contend that Koessler or Greater Buffalo is required to. The Government contends we must view this case—

The COURT: I am looking for motive. Do you claim that behind all this, if it were a scheme, was to get it, wash it out at a cost of a half a million dollars and drop Wilkes-Barre?

Mr. BERNSTEIN: Not at all, not at all. The Government contends—

The COURT: Apparently there was going to be less work there in Wilkes-Barre. The Union thought they were going to lose out?

Mr. BERNSTEIN: There needn't be less work; with Greater Buffalo's talents, there could be increased employment in both Wilkes-Barre—if Sylacauga is owned by somebody else and 1529 you have competition between Sylacauga and Wilkes-

Barre or competition between Sylacauga and Lufkin, if Greater Buffalo meets that competition by its own talent for economizing and making a better product, there is going to be more employment.

The COURT: Just a minute. You say there could be plenty of work in each place. One man virtually owns both, that is Koessler?

Mr. BERNSTEIN: And the Government contends he shouldn't.

The COURT: He was going to own both, he is interested either in running both full tilt, to the peak of efficiency, or not. Do you conceive he was going to fold the Wilkes-Barre Plant?

Mr. BERNSTEIN: I agree with that, he should want to operate both.

The COURT: Why wasn't that the prospect?

Mr. BERNSTEIN: The Government contends that under Section 7 of the Clayton Act—

The COURT: I'm not talking about the law; I am talking about realism. What was the Union's reaction to that; why were they so disturbed?

1530 Mr. BERNSTEIN: The Union apparently was not viewing it as Your Honor is viewing it. The Union wasn't viewing it from the standpoint of Greater Buffalo's right to do it but the——

The COURT: I'm not talking about the legal right to do it. Let's assume that there is no question that Koessler organized and controlled International Color Print and also controlled Sylacauga. Now, I do not understand why there was this concern, except the Government's concern, over that double ownership if both places were going into full production.

Mr. BERNSTEIN: Perhaps there shouldn't have been that concern. I would venture a reason then why there was.

The COURT: What occurred to me was this; it has been suggested in the lawsuit that International Color Print not only perhaps had labor trouble but was an archaic, old plant, that the prospect might be if the Sylacauga thing started to
1531 roll full tilt, close to the source of the paper—I was surprised to find that it didn't make any difference apparently how close you were to the paper plants the cost per roll was about the same—I would suggest maybe the idea was then Koessler's genius, as has been described here, would be that Sylacauga would surplant International.

Mr. BERNSTEIN: That is not the Government's contention. The Government's contention is that we have to view this act in the context of 1954 and 1955. The Court's analysis is taking the situation as it is today. The Government contends that the situation today is a continuation of the illegal conduct. If we view it in the context of 1954 and 1955, at that time the Government contends that International, while it desired to sell, while its stockholders had an interest to sell, that it didn't result—the sale didn't result solely from the pressure of
1532 King, but the Government contends that King's conduct and King's attitude, and because of the arrangement King had with Greater Buffalo, Greater Buffalo became the purchaser. Had it not been for that, the Government submits—although we have no crystal ball, nobody can say what might have been, if my grandfather hadn't had whiskers, he might be my grandmother—it is reasonable to assume that King.

having the interest it had in International, had it followed the law and not permitted Greater Buffalo to acquire International, then it would have had to make a decision, was it going out of the printing business, was it going to establish its own plant or was it going to do what Greater Buffalo Press did and acquire the International plant itself and make it into this worthwhile plant that Mr. Koessler has done today, providing

more employment. I dare say the Union isn't complaining now about fear of loss of jobs. As I understand it, there they were working longer hours and putting in more time than ever. This is not the gravamen of the offense. The gravamen of the offense is the third alternative that I suggested to Your Honor before.

The COURT: Mr. Bernstein, I don't want you to take any despair or comfort from my remarks. I am seeking the truth. I am trying to determine if there is any other explanation for what looked, in some instances, like possible acts perhaps designed to violate the law, that could be explained another way. That is the only reason I raise these points. When you have a scope of plus ten years of business activities and then comb back through the files of these businesses, you are bound to find instances that, isolated, look peculiar. I think this is true of any business which is complex, it is true of any individual affairs which are complex. I am trying to figure out why some of the straws blew in the wind the way they did here.

Mr. BERNSTEIN: I am trying to answer that with an explanation. My explanation for it is that although the plant was antiquated, it was of value to Greater Buffalo, and I respectfully submit that it would have been of value to any other commercial printer that King would have induced or selected or tried to get to take over that plant so that it could continue on in the printing business.

The COURT: This may be on a tangent, but you say "value to any other printer," I have a serious question about that. I suppose that would be collateral. We don't want to get into a comparison of the skills. Everybody concedes that Koessler can take an old press—I have heard this before in this case—and with his own genius develop it into something that the average person cannot do.

Mr. BERNSTEIN: I have heard that said, too.

The COURT: Now, you say it's of value to every other printer.

Why weren't other printers, with their equipment, able to meet his measure? Would they buy an old plant with antiquated equipment, which you said did exist, and bring in another Koresler and develop it into something fine? What I'm looking for is a reason. Was this a dead horse on the market that only somebody who knew how to handle it could do something with it?

Mr. BERNSTEIN. The Government contends it was not. The Government contends some of these exhibits that it will offer again, that up until this time have been rejected in evidence, some of these exhibits will shed light on the subject and show that King was considering other alternatives, how else it could be done rather than Greater Buffalo.

The COURT: I am getting into the act. We had our conference. I don't criticize anyone. We are going to try and get the evidence in and save the argument. I think it is enlightening. I'm in on the act now too. We will recess now.

(Thereupon, the court was in recess at 11:45 a.m.)

1537 (Proceedings resumed, pursuant to recess at 2:00 p.m.)

Mr. BERNSTEIN. With respect to the deposition of Frank J. Nicht, page 41, as background—this has not been previously designated to counsel for the defense, it is in response to a question that Your Honor asked yesterday concerning the effort made by the Government to examine Mr. Nicht with respect to some of these documents that have been offered yesterday as business records, and Your Honor will recall that the question was raised as to whether he was ever confronted head-on with it. I made a review of that and find that he had been. I would like to offer portions of his deposition with respect to that. The Exhibit P-13, which had been previously offered, is referred to in the portions of the deposition which I am about to read as Plaintiff's Exhibit 1, being Plaintiff's Exhibit 1538 1 of the deposition. At page 41,

"Q. Mr. Nicht, I show you Plaintiff's Exhibit 1——"
—which is now Government's Exhibit P-13 for identification—
"and ask you to look at this document, consisting of three pages, and I'd like to know, one, whether or not you wrote and signed that letter to Mr. Ward Greene?"

"A. Yes, sir.

"Q. Referring now, Mr. Nicht, to the last paragraph on page one, I refer to this sentence: 'I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize.' I ask you, Mr. Nicht, whether you know what deals were involved?"

Mr. RAICHLE: Wait a minute, wait a minute, where does that appear? 42 isn't in my book. Wait just a second. The question was withdrawn, there is no answer to that question.

Mr. BERNSTEIN: We will continue on:

"Q. Mr. Nicht, you admitted signing this letter; is that correct?"

"A. Yes, sir.

"Q. I refer now to the next to the last paragraph and 1539 to the sentence which I referred to here, and I now ask you to tell us what these deals were, and I am quoting the word 'deals,' 'd-e-a-l-s' in the letter purportedly written by you, that you refer to in Plaintiff's Exhibit 1?"

Plaintiff's Exhibit 1 is now P-16. And then again an objection was made to the form of the question and Mr. Feldman said:

"Q. I will ask the witness to answer the question.

"A. They are set forth here, aren't they?"

I digress, apparently referring to Exhibit P-13.

Mr. RAICHLE: I object to that and move to strike it out. I move to strike out counsel's statement "apparently referring." The Court will draw its own conclusion.

Mr. BERNSTEIN: I know that. I am trying to trace this along in an orderly fashion so that the Court gets the Government's contentions.

The COURT: I have it.

Mr. BERNSTEIN: Then there is another objection to the question, colloquy by counsel, and then Mr. Feldman said: "I 1540 will not argue with the witness, but I will ask you what those deals were, and if he wishes to use Plaintiff's Exhibit 1 to refresh his memory, I have no objection." And the witness says:

"A. In that case, I refer to the letter.

"Q. Suppose you look at the letter, and if it refreshes your memory, fine, but I would like you to tell us now on the basis of your present recollection what those deals were?"

Then there was another objection between lines one to six, more colloquy—

Mr. RAICHLE: Wait a minute, the record should show that the objection was made by Mr. Climenko who was the counsel for Hearst.

Mr. BERNSTEIN: Then at line 15 Mr. Climenko, counsel for Hearst, said: "In view of your present comment, I object to your question as improperly expressed." And then the question was asked:

"Q. Let me ask you this: You refer in Plaintiff's Exhibit 1 to certain deals being made. I ask you now whether as a factual matter certain deals were made on or about or immediately prior to May 26th, 1954?"

"A. Yes, sir.

"Q. Do you know now what those deals were?"

"A. I can't remember what they were except those that I committed to writing here."

The Government now offers the portions of Exhibit P-13 that the witness referred to, only insofar as they refer to deals in the document as recollection past recording. The witness stated that he didn't remember them, he stated that those were true that he referred to in the document. The Government, rather than offering the exhibit in evidence, would read into the record the portions of P-13 to which the witness referred when he said that he can't remember, "except those that I committed to writing here."

Mr. RAICHLE: Well, if the Court please, I object to that.

The COURT: Sustained. I point out that I am still considering it on other grounds, as an offer.

Mr. BERNSTEIN: Yes.

The COURT: Did you talk to Mr. Nicht about any more letters through Mr. Feldman?

Mr. BERNSTEIN: Yes, sir. Now, with respect to Exhibit P-10, which has been identified in the exhibit as deposition Exhibit 2, the witness was examined on page 47—

Mr. STEVENS: P-10 you are talking about?

Mr. BERNSTEIN: That is correct, that was identified as Deposition Exhibit 2. On page 47 the document is identified at lines 4 through 16, and then at line 18, Mr. Feldman asked this question:

"Q. Mr. Nicht, I show you Plaintiff's Exhibit 2—" which is now P-10—"and ask you to read this to yourself and tell us whether this refreshes your memory as to whether or not

you ever had any discussions, that is, telephone conversations with Mr. Walter Koessler in regard to any specific accounts?

"A. This one here.

1543 "Q. I would like to know from you whether it refreshes your memory?

"A. Yes, sir.

"Q. I again ask you whether or not you had any telephone conversations with Mr. Walter Koessler in regard to any specific newspaper account? What is your answer, sir?

"A. I have had telephone conversations with him.

"Q. I am referring to the telephone conversations.

"A. Yes.

"Q. You have had?

"A. Yes.

"Q. Referring to the period now on or about January 4, 1954, do you know whether or not you had any telephone conversations with Mr. Walter Kessler in regard to any specific newspaper account?

"A. I don't remember.

"Q. I show you Plaintiff's Exhibit 2——"—which is now P-10—"and ask you whether this refreshes your memory as to whether or not you had any telephone conversation?

"A. Yes, sir, I remember this. This refreshes me.

"Q. Prior to January 4, 1954, had you ever spoken with Mr. Koessler on the telephone?

1544 "A. Yes, sir.

"Q. About how many times a year did you speak with Mr. Koessler on the phone, do you recall?

"A. I don't know. I don't remember.

"Q. Prior to January 4, 1954, about how many times can you recall speaking with Mr. Koessler? Was it over ten, over twelve or was it one, two——

"A. I don't remember.

"Q. Had you spoken with him prior to this time at frequent intervals?

"A. I wouldn't call them frequent.

"Q. Would you say the number of times you spoke to him exceeded ten prior to that time?

"A. Over what period of time?

"Q. From 1950. That would be a four-year period.

"A. I think so.

"Q. Referring to January 4th, or thereabouts, 1954, do you recall whether Mr. Koessler telephoned you or whether you telephoned Mr. Koessler?

"A. I don't remember that.

"Q. Do you remember at all having a telephone conversation with him, now, at that time?

"A. I don't remember that distinctly, no, sir.

"Q. I asked you a moment ago whether Plaintiff's Exhibit 2——" which is now P-10—"refreshed your memory as to whether or not you had a telephone conversation with him, and you said yes?

"A. That's right."

The rest of page 50 was read yesterday. I will skip over to page 52 unless counsel wants me to read that.

Mr. RAICHLER. Go ahead.

Mr. BERNSTEIN. Page 52, line 11:

"Q. I want to know only as to the conversations you had with Mr. Koessler. Never mind what happened after that. During the end or during the middle of the conversation you had with Mr. Koessler, what did he say, summarizing it, and what did you say, summarizing your previous part of the conversation with him?

"A. I can't remember that. I can't remember that."

And then Your Honor will see from page 52, line 13, another subject was gone into. On page 53, that was read into the record yesterday. Page 54 was read yesterday; page 55 was read in down to line 16. Then the examination went into another exhibit, Exhibit 3, and that continued on through page 69, and then at line 18 on page 69, I'll resume:

1546 "Q. Referring to Plaintiff's Exhibit 2——" which is now P-10—"I ask you whether or not when you wrote or dictated this memorandum on or about January 4, 1954, whether at that time it was a correct statement or report of the telephone conversation you had with Mr. Walter Koessler?

"A. I think so.

"Q. When you say 'think so,' is there any doubt about it?

"A. No."

The Government offers this evidence as a recollection past recorded, contending that with respect to this document the witness had been questioned and several times repeated he did not remember it, stated it was true at the time it was made. It is offered on that basis.

The COURT: However it is offered, it still has the primary purpose of a declaration of an alleged co-conspirator, which you wish to be used against another alleged co-conspirator?

1547 Mr. BERNSTEIN: Yes.

The COURT: What else does it serve here except the declaration you would like the Court to accept against the co-conspirator?

Mr. BERNSTEIN: It's a little different in this respect—

The COURT: You don't take evidence in because you might find an isolated ground for its receipt, such as a past recollection recorded, without delving, in my opinion, into the purpose of it, the sole purpose is to use the incriminatory statement of one co-conspirator against the other?

Mr. BERNSTEIN: Yes, Your Honor. There is this feature to be considered; had Nicht been alive, had Nicht been on the stand here, Mr. Nicht having been one of the participants, having been questioned here with the opportunity of the defendants to cross-examine, if the witness had stated on the stand that he participated in an event with one of the
1548 defendants, and he is trying to testify concerning a conversation with that defendant, and he says he doesn't remember but he recorded the transaction immediately after the event, that the statement is true, it would be admitted regardless of the co-conspirator.

The COURT: I don't agree with you. The purpose still remains the same. You still have a reservation on my part of the acceptability of the exhibit based upon the things we have talked about. You must establish your case. Is there any objection on other grounds?

Mr. RAICHLE: Yes. I also want the record to show that I base the objection primarily on what Your Honor observed to be the grounds, and also on the grounds that Mr. Bernstein is mistaken; he said the record did refresh his recollection as to the conversation, and the best evidence and the proper way
1549 to have proceeded would have been to ask him from his recollection as refreshed what took place.

The COURT: Regardless of whether he adopted the letter on this deposition or not, I consider the purpose of the offer to be the same as it has been.

Mr. RAICHLE: That is right.

The COURT: On that ground, over your objection, I now sustain the objection as a past recollection recorded.

Mr. STEVENS: May we join in that objection?

The COURT: Yes.

Mr. BERNSTEIN: In view of Your Honor's ruling and to save time, may the record show that the Plaintiff will offer with respect to P-22, portions of the deposition from page 83, line 8 through line 20. Could we have the Reporter type them into the record without taking the time to read them at this time?

The COURT: Do you stipulate to that?

Mr. RAICHLE: Yes.

The COURT: Mr. Stevens?

Mr. STEVENS: Yes, we are willing.

The COURT: There is a section of the testimony, 1550 which Mr. Bernstein wants you to type in the record —

Mr. STEVENS: Perfectly agreeable.

The COURT: Which has to do with another exhibit, which one is that?

Mr. BERNSTEIN: Our Exhibit No. P-22, which is referred to in the deposition as Exhibit 4-B.

The COURT: It is stipulated that may be done.

Mr. RAICHLE: It is all right with us.

The COURT: Will you give Mr. Noel the pages?

Mr. BERNSTEIN: The reporter has been advised; page 86, line 8 through line 20;

"Q. I show you now Plaintiff's Exhibit 4-B through 4-D, and ask you whether or not these are memoranda typed or committed to paper under your direction and kept in the regular course of your business as sales manager of King Features Syndicate?

"A. Yes, sir.

"Q. As far as Plaintiff's Exhibits 4-B through 4-D are concerned, to your knowledge would such memoranda, when committed to paper on or about the respective dates therein, be true and accurate statements of the facts reported therein?

1551 "A. Yes, sir."

Mr. BERNSTEIN: Then on page 90, line 22, with respect to Exhibit P-67, which is 5-D in the deposition, and P-68, which is 5-E in the deposition, and page 91, line 2 through 7, and line 10 and line 11 through 23:

"Q. Mr. Nicht, I show you Plaintiff's Exhibits 5-A through 5-K, inclusive, and ask you to examine these exhibits, and I ask you whether these are memoranda which you made or had made at your direction in the regular course of your duties as a sales manager of King Features Syndicate on the dates indicated therein. I particularly call your attention to Exhibits 5-A through 5-B, which do not bear any initials on the memorandum so as to indicate the offer.

"A. Yes, sir.

"Q. Were these memoranda kept by King Features Syndicate in the regular course of their business after they were committed to paper?

"A. Yes, sir.

"Q. Would the same be applicable, namely the keeping of the records in the regular course of business of King 1552 Features Syndicate as regards Plaintiff's Exhibits 4-A through 4-D?

"A. That's right.

"Q. They also, that is, Exhibits 4-A through 4-D, were kept by King Features Syndicate in the regular course of their business?

"A. Yes, sir."

Mr. BERNSTEIN: Then on page 101, the reference to Exhibit P-66, that is deposition Exhibit 7-F, line 5 on page 101 through line 14:

"Mr. FELDMAN: I would like at this time to have marked as Plaintiff's Exhibit 7 memoranda sent by F. J. Nicht to Ward Greene and memoranda sent from Ward Greene to F. J. Nicht, and memoranda sent from F. J. Nicht to J. D. Gortatowsky, and memoranda sent from J. D. Gortatowsky to F. J. Nicht. In addition, memorandum sent from F. J. Nicht to F. C. McLearn. I ask at this time that the memoranda be marked as Plaintiff's Exhibit 7 with the following alphabetical descriptions:"

Mr. BERNSTEIN: Then skip to page 102, line 9 through 11:

"I ask that a letter dated November 4, 1955, from 1553 F. J. Nicht to Ward Greene be marked as Plaintiff's Exhibit 7-F."

Mr. BERNSTEIN: And then skip to page 106, line 6 through line 12, and with respect to that, the Government contends that the witness incorporated the document by reference into his statements.

Mr. RAICHLE: What?

Mr. BERNSTEIN: Into his testimony:

"Q. Referring to Plaintiff's Exhibit 7 again now, sir, as to the memoranda or copies thereof or letters which contain your name or your signature, would the statements contained in such memoranda, to your knowledge, at the time they were committed to paper, be true and accurate statements of the facts reported therein?"

"A. Yes."

The COURT: You make an offer of those; I make the same ruling to the objection which I assume will be the same. Objection sustained.

Mr. BERNSTEIN: Right. The offer includes—with respect to those documents where the witness testified they were true, the Government offers it as a recollection past recorded.

1554 The COURT: Same ruling.

Mr. BERNSTEIN: With respect to those documents where the deposition reflects that he incorporated the facts into his testimony by referring to the documents, the Government does not offer the document in evidence, just offers those portions to be read into the record.

The COURT: I take it from what you are saying, in some instances his recollection was refreshed and he may have testified. The balance you wish to be offered as a past recollection recorded?

Mr. BERNSTEIN: In some instances, they are offered solely on the ground of recollection past recorded; in other instances, he testified in part about the transaction and then he referred to the document for the remainder of the transaction, and with respect to those, the Government contends this is really incorporated by reference in his testimony and would wish
1555 to read into the record just the portions of the document which the witness referred to. For example, if the witness said the facts in this exhibit are true, then the Government would offer only those portions of the exhibit which are facts, not opinions or conclusions or comments or anything else. I take it Your Honor makes the same ruling?

The COURT: That is right.

Mr. BERNSTEIN: With respect to Exhibit P-19, which has been identified as Exhibit 9-G and P-24, they have been referred to in the deposition at page 112, line 14 to line 20:

"Mr. FELDMAN: I would like to offer as Plaintiff's Exhibit 9 memoranda which bear the initials in the left-hand corner as

'F.J.N.' and are directed to no individual. I would also like to offer as part of Plaintiff's Exhibit 9 a salesman bulletin number 14243, which bears the typewritten name F. J. Nicht."

Mr. BERNSTEIN: And then skip to page 117, line 3 through 10:

1556 "Q. Mr. Nicht, I show you Plaintiff's Exhibits 9-A through 9-O, inclusive, and ask you whether these memoranda and the sales bulletin number 14243 was prepared by you during the regular course of your business with the King Features Syndicate Division of the Hearst Corporation?

"A. Yes, sir."

Mr. BERNSTEIN: Then page 118, line 9 through 14:

"Q. As to the statements contained therein, and the sales bulletin and the memoranda prepared by you, are the statements therein true and accurate statements of the facts, as reported at the time the memoranda were prepared?

"A. Yes, sir."

Mr. BERNSTEIN: Very well, Your Honor. I now proceed to Topic 14. Topic 14, under the general heading, October, November 1955, NEA agreed not to compete with Greater Buffalo and subsequently not to compete with King, it had sufficient knowledge from which it should have reasonably known that King had some non-competitive arrangement with Greater Buffalo.

Mr. RAICHLE: This is a contention?

1557 Mr. BERNSTEIN: That is the contention, yes.

Mr. RAICHLE: I won't rise to argue about it. There is no evidence of it.

Mr. BERNSTEIN: One moment, Your Honor. P-44, P-45, P-46. P-44 formerly was Document 65. P-45 formerly was Document 63. P-46 was formerly Document 76. These are offered as against the defendant NEA only.

Mr. STEVENS: Now, may we have the numbers again?

Mr. BERNSTEIN: P-44.

Mr. STEVENS: I have it.

Mr. BERNSTEIN: P-44 is a document signed H.W.W. It has been stipulated that this document was prepared by or under the supervision of Herbert W. Walker, and the stipulation which shows that he during this time was the Vice-President of NEA. It is dated March 30, 1954, addressed to Eli Minton, who has been stipulated was a sales representative of NEA at that time. Document P-45 is a letter dated May 4, 1954, from

1558 Herbert W. Walker to John L. Blake, Scripps-Howard Supply Company, New York City. Document P-46, dated May 17, 1954, another document stipulated, which has been prepared by or under the supervision of Herbert W. Walker, also addressed to Eli C. Minton. The Government offers each of these documents in evidence, and offers them together because they relate to the same subject, and the Government would contend that reading them together they would bear out the Government's contention; P-44, P-45 and P-46.

Mr. STEVENS: If the Court please, NEA makes no point of the fact these are not documents from our files nor documents signed by Mr. Walker. We do object because they are really nothing more than normal business inquiries by the President of NEA, to try to find out what is going on in the business, a concern which was a small factor in the over-all color comic supplement field, trying to learn what the larger elements in the business were doing.

1559 The COURT: That goes to the weight you consider should be given to them?

Mr. STEVENS: That may be.

The COURT: They are offered here as part of your ordinary correspondence, between you and others.

Mr. STEVENS: These are really—well, two of them and between Mr. Walker and a sales representative.

The COURT: Do you say you do not consider these business records?

Mr. STEVENS: No, I am not saying that. I am saying I don't think they are relevant to any issue in the case.

The COURT: That goes to their weight as I see it. I will overrule you and receive them subject to the comment that the weight of them is something for argument.

(Thereupon Government's Exhibits P-44, P-45 and P-46, previously marked for identification, were received and marked in evidence.)

1560 Mr. MOORE: These are offered against NEA only?

Mr. BERNSTEIN: That is correct, offered for the purpose of establishing the knowledge that NEA had at that time.

Mr. STEVENS: Or the absence of knowledge?

Mr. BERNSTEIN: Or the absence of knowledge. The Government contends the offer is to show the knowledge, and I might add that the Government does not rely on any one document, but this group of documents, to show that situation.

P-44, first paragraph: "Dear Eli: This will be a report to you—"

The COURT: Can't we do this? Rather than reading, can't we agree to copy this in?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Can't we agree to copy all these in?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: You see, I told Mr. Raichle—I know that he has things to do, and others have, as well. I want to give this case all the time it needs but I am targeted in at four o'clock. I hope we can meet it. So, I think rather—I am not going to
1561 listen unduly to these readings—I shall read them in the record. Why don't you refer to them and let Mr. Noel copy them in?

Mr. BERNSTEIN: Very well, Your Honor.

Mr. STEVENS: That is agreeable.

Mr. BERNSTEIN: The first full paragraph—perhaps I'd better do it this way so that if counsel wishes anything added to what I am designating, they would have the opportunity to do it.

The COURT: Have Mr. Noel copy the whole thing; any objection to that?

Mr. STEVENS: No.

Mr. BERNSTEIN: From the Government's standpoint, it doesn't address the Court's attention to the specific parts of the documents that way.

Mr. STEVENS: If the Court please, that is one of the troubles with the manner in which they are presenting their case. They want this record to read like a brief, and what they ought to do is introduce their evidence and let us discuss it at the appropriate times and in the ordinary course.

1562 The COURT: I consider that in the same light I would a deposition. If a person wishes to read parts, he may be required to read it all. I'm going to have you introduce the letters in evidence. For the reason one paragraph might temper and mellow another, you can comment on it now. You only offer it, if you wish, for certain paragraphs, don't read them, and then the balance of the letter will be received in evidence for whatever purpose it may have.

Mr. BERNSTEIN. The Government offers this document for the first two paragraphs and the first sentence in the third paragraph and the first four lines in the fourth paragraph up to the

end of the second sentence in that paragraph; and offers on page two the third full sentence in that second full paragraph.

The COURT: I can't see, Mr. Bernstein, how you can offer parts of a letter that may be of interest to your side of the case, because the letter is not divisible in that fashion. If they were isolated things, maybe both sides would stipulate half of the letter does not apply to this problem. It seems to me when you offer a letter, you offer it all the way.

Mr. BERNSTEIN: The Government offers the entire letter.

The COURT: Then why emphasize it? That is the subject for a brief.

Mr. BERNSTEIN: For this reason, unless—

The COURT: What you are doing—you are not offering it for certain paragraphs, you are pointing out to me, in substance, those paragraphs that you think are essential to your side.

Mr. BERNSTEIN: That is right, and also pointing out at the same time, as far as the Government is concerned, there is no need for the Court to trouble itself with reading the rest of the letter unless it chooses or unless the defense wishes it to be done.

The COURT: I certainly shall read it all. I won't take part of a letter that might be mellowed and tempered by another paragraph. I think it would be manifestly unfair if I did. It is all offered. You make more of one paragraph than another, or something out of a paragraph and nothing of another. We are just talking here, the letter is offered. You would like to comment on those things you would like me to look carefully at.

Mr. BERNSTEIN: It is different than that. The Government contends that, as far as it is concerned, if it wants to establish point A, and the letter has A, B, C, D, E and F, from the Government's point of view C, D, E and F do not relate to this lawsuit, shed no light on it, of course, that is not true in all cases, but in some cases, the Government wants to point out, as far as it is concerned, it is only urging that point A need be read. Now, it makes no difference, and if Your Honor believes it would be more desirable, there is no need to read any of this into the record, the documents speak for themselves. The exhibits will be in evidence. Now, it is only to the extent this will aid the Court in deciding on the motion—

The COURT: The only interest in this that I have in copying it into the record is it will have me jumping around look-

ing for exhibits. If it is going to be copied, it ought to be all copied, as it will be. You want me to take certain portions as carrying the point for you.

Mr. BERNSTEIN: Very well.

"Government's Exhibit P-44 in Evidence"

MARCH 30, 1954.

Memo to: Eli Minton, Dallas.

"DEAR ELI: This will be a report to you, and will also serve as a report to others in NEA, on the projected color printing plant in the Southwest.

1566 "Since you first reported the rumors of activity, which was at about the same time we received a report from John Blake of Scripps-Howard Supply about the enlargement of the Lufkin Papermill and the setting up of a plant there by Greater Buffalo Press, I have been checking various sources.

"You also reported the possibility of color plants being established down there by Sol Bloom and Whitmer, the Houston Printer, but my information more or less confirms the impression that you gained that neither of these parties is apt to set up a plant.

"I first checked with Kenneth Koessler, since Walter, the head guard there, was in Florida at the time. It isn't necessary to go into any detailed report of the talks with Kenneth, other than to say that he reported that the Koessler's did not want to set up a plant there, felt there was really not enough business to justify it, realized that this would simply increase the overhead for them, since their plants at Buffalo and Dunkirk could print everything in the Southwest now without being hard-pressed. But, he said they might be forced into it to protect the business they had in the Southwest, and that

present customers wanting to get the comic sections at
1567 lower rates had approached them on opening a plant down there.

"After Walter's return, I want to Buffalo to see him. Walter said they had not yet definitely decided to go ahead with the plant, but that may be more of a way of saying that everything has not been settled, because I believe they intend to go ahead. He said the movement really started when Fred Danner, the Akron Color Printer, went down to explore the field, and as a result, the Koessler's best clients down there told him they

thought they ought to open a plant at Lufkin, next to the paper-mill. Walter went down to check. Kurth, at the Lufkin Mill, offered to put up a suitable building which the Koessler's could acquire over a term of years on a rental purchase basis, and the Lufkin Mill, with its plans to install a third papermaking machine, would be able to supply the paper. The Koessler's still have the color press purchased some years ago from the Detroit News. It is still in storage, and this would be the press which would be installed there. I mentioned to Walter that Ted Dealey had written someone at the plant would be operating by January 1. Walter says that that would be absolutely impossible, and if they do go ahead, it will take closer to two years than nine months. He thought it would take nearly 1568 that long to build and get the paper machine installed.

It might not take more than five or six months to put up the buildings, but the press installation is quite a job.

"John Blake confirmed that the Lufkin Mill has decided to install a third paper machine, and he thought it could be an operation and in not much more than a year. Scripps-Howard, incidentally, is a sizable stockholder in the Lufkin Mill, and Blake is going after some additional information for me.

"Walter said that the set-up became more attractive than they assumed it would be when they found out that a new plant could be obtained without laying out a lot of capital and that a press they already have could be installed. Also, he said there was a differential of \$12 a ton in the price of paper as compared with the Canadian Mill delivered price, but Blake says this isn't the case. Lufkin has been selling at \$126, as compared with \$125.50 for Canadian paper at Buffalo, and \$130.50 for Canadian paper in Texas.

"The price of paper, of course, is very important. When we originally started thinking about a Southern color plant 1569 some years ago, I liked the Lufkin set-up, because paper was then obtainable there at the Canadian base price. But, I understood that shortly thereafter the price changed to the Canadian zone price, and that meant that you could ship the comic sections from Buffalo for very little more than the added transportation cost of Canadian paper delivered in Texas. The Koessler's now have the three runs at Dallas, Houston, and San Antonio, and Walter said they needed a lot more work than that to justify the Southwest plant. He had apparently sounded out the Fort Worth Star-Telegram, and reported that Bert

Honea was pleased with his present operation by which he prints his own section and that of the Times-Herald. He thinks he's making some money out of it and, of course, has a brand new press that he naturally doesn't want to scrap. Incidentally, Walter said that King is no longer in the picture with this Star-Telegram work, that arrangement having been terminated some months ago. Other runs which Walter said he ought to have in order to come out were Oklahoma City, which also has a newly rebuilt press, Tulsa, Little Rock, Memphis, New Orleans, and Houston. He professed not to be interested in smaller runs. We have never found the Koessler's competitive with King on the smaller runs, and if they cling to their ideas as to makeready cost, etc., they never would have come up with a good price on the Pappert run. They really prefer not to handle this smaller stuff.

"As you will recall, we have discussed a Southern plant with the Koessler's for several years. On the last exploration of possible sites, business, etc., I again recommended the Southwest, but the Koessler's still felt that it ought to be in the Southeast, probably around Chattanooga. In those discussions, it was evident to me that it would possibly be difficult to be in business with the Koessler's. I asked Walter when I saw him last week whether he wanted any partners in the Southwest venture and he replied that with the small amount of capital which would be necessary to get the plant going because of an advantageous building set up and the press which they had in storage, they felt they preferred to go it on their own. Back of that, of course, may be some resentment at our World Color set up.

"As to World Color, it has been reluctant to push off into a full blown supplement printing operation until it can get a better manning set up out of the Union at St. Louis, and it has been working on that for the last few months.

Confidentially, it involves switching from the Newspaper Pressmens Union to the Commercial Pressmens Union, and that requires some deft maneuvering. Also, it will be extremely difficult for World Color to handle ten and fourteen-page sections without making some rather costly changes on the presses.

"In view of the Southwest activity, I have pointed out to them the importance of getting going to the extent possible right away.

"They now have the idea that possibly the best set-up would be to figure on printing the supplements at their new plant in Sparta, Illinois, and then trucked to St. Louis for baggage shipments. With your own truck the cost should be quite low. One reason for this is that a new and very fast press has just been installed at Sparta, and the manning situation there is okah.

"I'm to have a session with them in St. Louis the first of next week, and I hope that we can clear things so that we can get a green light to go after any and all business in the Southwest. It might be necessary for a while to try to pick our spots down there. World Color keeps assuring me that it is anxious 1572 to get into the supplement printing work and that it is anxious to do it with NEA. As you know, we have a written agreement with them that it will be with NEA, and I am sure the delay does not indicate any desire to back away from our arrangement or back away from supplement printing.

"Sincerely,

H. W. W."

Government's Exhibit P-45 in Evidence

"MAY 14, 1954.

"Mr. JOHN L. BLAKE,
Scripps-Howard Supply Company,
230 Park Avenue, New York, New York.

"DEAR JOHN: Ever since you gave me the surprising news that the Koessler's are not going ahead with the Lufkin Plant, I have been lining up all the facts we have that might apply to a Lufkin operation.

"We'll go over everything when Fred Ferguson is out here for a session next week. So far, I can't get enthusiastic about the possibilities of setting up a plant down there.

"I believe I mentioned on the phone that, for so many points in the Southwest, the delivery cost from St. Louis, even though the distance is greater, is no more than it would be from Lufkin, because of very favorable baggage rates from St. Louis. 1573 As a matter of fact, Lufkin is only on one railroad which handles baggage, and you'd have to truck either direct to the newspapers, or to some point on the lines that can reach more points in that area. Trucking is more expensive than baggage, unless you make a large investment for your own trucks

and then work it out in payloads for return trips. As you well know, the cost of any new plant is very high these days and, so, it takes a large volume of printing to break even on a very high investment. The Koessler's are very good at figures and if they can't see it except at a large paper discount, I'm inclined to think they're right.

"World Color in St. Louis can come out on the Southwest business, because it has a lot of comic book and other color work in its plants. In any event, after we have our huddle, even though we are not inclined toward the Lufkin project, I would like to talk to Lew Calder. Thanks for keeping me so well informed.

"I have a copy of Bud Messing's letter to you. He wrote it before I told him that any purchase from the Supply Company would be through NEA. Either way will be agreeable with him. It might be well to consider direct sales to him 1574 covering our work. In that way World Color, instead of NEA, would be supplying the money to carry the paper account with you. With best wishes,

"Sincerely,

HERBERT W. WALKER."

Government's Exhibit P-46 in Evidence

"MAY 17, 1954.

"Confidential

"Memo to: Eli C. Minton, Dallas.

"DEAR ELI: I am enclosing a copy of a letter to John Blake, for your information, and it tells a surprising story.

"When I talked with Walter Koessler some weeks ago, he told me about the \$12 a ton discount on paper, that it seems like he and the Lufkin Mill people were talking about entirely different figures and didn't know it.

"The Canadian delivered price in Texas is around \$138 a ton. It is \$131 at the Port and delivery upstate will run another \$6 to \$8. Lufkin's price for paper is \$126, which is \$12 under the Canadian price, but Walter thought he was to get it at \$12 under the \$126 price, or \$114.

1575 "When he found that out, he said he was not interested in going ahead, according to the word John Blake obtained from Calder, whose father is heavily interested in Lufkin and is the New York representative of the mill. It's

hard to believe that everything could have gone this far with this mix-up on the very important point of paper cost. At the Koessler party at the Stork Club, Walter was telling everybody that they were going ahead with the Southwest operation.

"I had some difficulty in straightening out this paper price business, and it was only after I had the session with the old master of cost, Houston Harte, that I was really in the clear. It was then that I was able to confirm with pleasure my belief that the actual paper price at Lufkin will be about the same as at St. Louis—\$126 vs. \$127—and that with the favorable shipping rates out of St. Louis we can be completely competitive with the Lufkin Mill at most points.

"From the start, Kenneth Koessler has been opposed to the Lufkin deal. He has said all along that the set-up would simply take work out of their Buffalo plants when these plants are not now up to capacity, and increase the overhead 1576 through the Lufkin set-up, which is bound to be expensive even under the best of conditions. He also has felt that there simply wasn't enough long-run stuff in the Southwest to make the plant profitable.

"With all the money you have hanging on trees down in Texas, it is, of course, entirely possible that someone else may start the plant.

"We are doing some checking on baggage out of Lufkin, but it looks like it isn't a good baggage point. If you truck to some point on Missouri Pacific, for example, which has very low baggage rates, that's going to cost money. The S-P seems to be the only road with baggage service out of Lufkin. While we want to do some checking, I think our set-up with World Color is so good that we will not want to go into the Lufkin set-up.

"Sincerely,

H.W.W."

Mr. BERNSTEIN: I will just identify the document and ask that it be copied into the record.

The COURT: All right.

Mr. BERNSTEIN: Document P-47 is offered as against NEA only. It is a letter dated June 9, 1954, from Eli Minton, a 1577 stipulated sales representative of NEA, to Herbert Walker, stipulated as the Vice-President of NEA. It is offered in evidence.

Mr. STEVENS: I make the same comment about relevancy; otherwise, no objection.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-47, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-47 in Evidence

"DALLAS,
June 9, 1964.

"Mr. Herbert Walker, Cleveland.

"DEAR HERB: Yesterday I got some more information on the Lufkin Greater Buffalo Plant from Jim Chambers of the Dallas Times Herald. Jim attended the recent meeting in Dallas with one of the Koessler's, Ted Dealey, Bert Honea and others, re which Millard Cope reported.

"Jim says GB will definitely set up a plant and are shooting for the first of the year. He also said King has a working 1578 arrangement with GB-Lufkin whereby they can put runs into that plant; but he is almost sure King has no financial interest in the plant. As you know, the T-H section is now printed at Fort Worth Star-Telegram. Jim said King has no lease on that press and never has had; that King took the run into Fort Worth to save the T-H transportation and if they elected to put it in Peoria or elsewhere, the T-H couldn't do anything about it as the contract is with King. Jim said that when the King contract expires he will see if he can make a deal direct with the Star-Telegram.

"According to Jim, Bert Honea's interest in the Lufkin Plant is to get a market for more Lufkin paper which would enable the mill to add the third unit as Honea is a director of the papermill and Star-Telegram has stock; that Honea did try to sell their color press to Koessler but they weren't interested, one reason being the press jumps four pages and is twenty pages capacity. Jim knew that the old Detroit News color press is to be installed in Lufkin.

"Jim said there is yet going on discussions re the price of paper at Lufkin but the understanding is that the price 1579 will be made satisfactory.

"GB now has some contracts on comic sections and others will come along as contracts expire, according to Jim.

"Seems to me GB is going to put a plant in Lufkin.

Best regards,

ELI MINTON."

Mr. BERNSTEIN: P-48, Your Honor, another letter offered against NEA only. A letter stipulated prepared by Herbert W. Walker, Vice-President of NEA, to Eli Minton, dated October 13, 1954.

Mr. STEVENS: Same position.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-48, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-48 in Evidence

"OCTOBER 13, 1954.

"Memo to: Eli Minton, Dallas.

"DEAR ELI: Regarding your report on the Lufkin Printing Plant, I was talking to Kenneth Koessler the other day and he told me that the Lufkin Plant was still a long way from operation. He indicated it wouldn't be running until early in 1956.

Sincerely,

H.W.W."

Mr. BERNSTEIN: P-49, Your Honor, is offered as against NEA only. It is a letter dated February 1, 1955. It is a carbon copy of a letter by Herbert W. Walker to Mr. John W. Frierson, Birmingham Post-Herald, Birmingham, Alabama. Attached to it is an original letter from John W. Frierson to Herbert W. Walker, and the Government contends P-49 consists of two pages, the first two pages out of the carbon copy of a reply to an incoming letter, which is the third page of that exhibit. The Government offers it against NEA only.

Mr. STEVENS: We object to the attachment, Your Honor. I don't think Frierson's letter is proper, is a proper element to be introduced. Our position on Walker's letter, the first two pages of the exhibit, is that we do not think it is relevant, otherwise we have no objection.

The COURT: All right, overruled, received.

(Thereupon, Government's Exhibit P-49, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-49 in Evidence

"FEBRUARY 1, 1955.

"Mr. JOHN W. FRIERSON,
"Birmingham Post Herald,
"Birmingham 2, Alabama.

"DEAR JOHN: Thanks very much for your recent note concerning the new plant which International Color Printing is planning at Sylacauga, Alabama. I took your letter with me to New York and John Blake of the Supply Company was able to get definite confirmation from Mr. Watt of the Coosa River Mill. We had heard rumors about it.

"I have not yet been able to establish just what the play will be. International prints exclusively for Hearst 1582 (King Features) at its two plants at Wilkes-Barre and Peoria. King has the bulk of the business in the Southeast, and as I understand it, plenty of capacity at the two northern plants. We have a number of smaller runs in the Southeast and Greater Buffalo Press (The Koessler's) has sizable runs at Miami, Mobile, Atlanta and Nashville.

"The report John Blake obtained was that a meeting was held last week to finalize plans.

"The important thing will be the price of paper and Mr. Watt told John only the regular rates would apply. If that's the case, as I understand it, the short trucking distance will not be a factor, but I wouldn't be surprised if some kind of a deal would be worked out.

"Unless it is, it would seem that you could print the sections in a large established Northern plant and ship them South for less than you could bring them out of a new and very costly plant in the South. All printing plants are costly these days. The color printing business is subject to very keen competition, particularly since the bottom has fallen out of the comic magazine market. With the fancy new plant costs, it is certainly a \$64 question as to what moves we should make with 1583 Buffalo Color Press.

"NEA recently made an arrangement with World Color Printing in St. Louis which enables us to get into a good portion of the Southeast at a reasonable cost. We have been printing the section for the combined Jackson, Mississippi paper there.

"I imagine that International may be influenced by the fact that it has a very high labor cost at Wilkes-Barre.

"I don't know whether your letter meant that you still have some real estate to rent. If you do, it would be a real pleasure to come down and see you, even though we might not have any intention of renting it.

"Earl Anderson from our Cleveland NEA office is now general manager of Buffalo Color Press, with Leon Herman continuing as President. Leon has had eight or nine coronary attacks which amazes his doctor. The little guy keeps bouncing back in great shape, and spends more than half of the day at the office most of the time.

"I'll appreciate it if you will pass along any more information you may pick up on this new plant. Mr. Watt told John it would save the Birmingham News \$500 a week on the delivery cost of its sections. With the newly announced 1584 \$20,000,000 International Mill, we're really getting some newsprint capacity in the South and someday it ought to pull down that high newsprint price.

"With kindest regards and best wishes,

"Sincerely,

Herbert W. Walker."

Government's Exhibit P-49 in Evidence (Attachment)

"BIRMINGHAM 2, ALABAMA,

"January 14, 1955.

"Mr. HERBERT W. WALKER,
Vice-President and General Manager,
NEA Service, Inc., 1200 West
3rd Street, Cleveland, Ohio.

"DEAR HERB: I have heard from reliable sources that the International Color Printing Corporation is seriously contemplating building a plant in Sylacauga, Alabama.

"I was told that they intend to print about 2,000,000 comics in this plant. They will go after papers in this territory which they do not have—Tampa and Jacksonville, Florida were mentioned.

"If they locate at Sylacauga they would be approximately 1585 ten (10) miles from Coosa River Mills. It would cost them about four cents (4¢) per ton mile. I am sure that even you, with your great love for the almighty dollar,

will admit is a low cost. The International people have been looking into our labor contracts, particularly the Pressmen and the Mailers. It seems that these people have been negotiating with the pressmen in Wilkes-Barre since March 1954.

"I am not trying to tempt you, Herb, but I felt that you might like to have the above information.

"May 1955 in the years to come be good to you and yours.

"Sincerely,
JOHN W. FRIERSON."

Mr. BERNSTEIN: With respect to P-50, Your Honor, memo for the files, dated February 9, 1955, prepared by H. W. W., stipulated as Herbert W. Walker, Vice-President of NEA, offered against NEA only.

Mr. STEVENS: On the matter of relevancy, objection.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-50, previously 1586 marked for identification, was received and marked in evidence.)

Government's Exhibit P-50 in Evidence

"FEBRUARY 9, 1955.

"Memo : For the files.

"At my request, Leon Herman called Vince Garvey, general manager of International Color Printing Company at Wilkes-Barre, and without any beating around the bush asked him whether International will open a new color printing plant near the Coosa River Papermill near Birmingham, Ala.

"Garvey confirmed our previous information that the plant had been definitely decided upon. At the present time the location has not been determined, but it probably will be in one of two small nearby towns—Sylacauga or Childersburg. These places are thirty and forty-two miles southeast of Birmingham. Expectation is that the plant will be going by January 1, 1956. So far, no break on the paper price has been obtained from Coosa River, but International is still hopeful. This confirms statements made to John Blake by mill representatives, 1587 who also said that there will be no break.

"International will continue its plants at Peoria and Wilkes-Barre. The decision to go into the Southeast was made, according to Garvey, because International is now doing about 90% or 95% of the supplement printing in that area. His esti-

mate is on the high side, but King does have most of the business down there.

"The Alabama Plant will work under the same arrangements as the two Northern plants, as far as King Features are concerned. In other words, work will be done only for King Features, at least in the newspaper field.

"Garvey said he had very little information concerning the Koessler's plans for a plant at Lufkin, Texas, but thought the Alabama plant would be in a good position to cover some sections of the Southwest.

"Practically all shipments will be made by truck, since railroad facilities are not good and trucking costs are believed to be generally cheaper. The Company may purchase some trucks to handle the shipments. H.W.W.

"P.S. The Coosa River representative had previously told John Blake that there were 55 supplement customers 1588 in the Southeast territory and that King, International is now printing for 42 of them."

Mr. BERNSTEIN: P-51, offered as against NEA only, a letter from Herbert W. Walker of NEA, to Walter Koessler, Greater Buffalo Press, Inc., dated August 2, 1955. It is offered against NEA only.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-51, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-51 in Evidence

"AUGUST 2, 1955.

"Mr. WALTER KOESSLER,

"Greater Buffalo Press, Inc.,

"302 Grote Street, Buffalo 7, New York

1589 "DEAR WALTER: We salute you as the 'Color Printer' of the country as a result of your purchase of International Color Printing.

"The news came as quite a surprise to me, but I want to congratulate you on putting over what must be a whale of a deal. As one of your customers, I would like to go over the new set up with you in the near future. I expect to be in Buffalo within a week or ten days, and I will give you a call a day or two in advance to make certain you will be there.

"Our new One-Bite etching process looks mighty good now, particularly for color comic work, and if you still want the machine for which you gave me a verbal order some weeks ago, we can give a definite delivery date.

"With best wishes for the success of your expanded organization.

Sincerely,

HERBERT W. WALKER."

Mr. BERNSTEIN: Now, moving to the next topic, Topic No. 15—strike it out. In view of the way the exhibits are going in, I might state to the Court that I believe it will be helpful if I tell you what the Government contends with respect to 1590 these three documents; or would Your Honor prefer to have them in the form of a brief?

The COURT: I would rather have that in letter form or brief form, with copies to your opponents, for the purpose of a reply.

Mr. BERNSTEIN: Yes, sir. Topic 15: These documents are offered for the purpose of showing that the Greater Buffalo acquisition of International eliminated potential competition between Greater Buffalo and International for printing in the South. Document P-53 is a document formerly known as Document 48, prepared by Joseph J. Gorman, dated May 26th, 1954, report on possibilities of color printing plant in or near Birmingham. It is offered against the defendant International only.

Mr. RAICHLE: He offers this only against International Color Printing? A strange development evidenced by that offer. The complaint cites International Color Printing is made a 1591 party only for the purpose of relief. There is no charge of wrongdoing against International Color Printing. It is, on its face, a document prepared by somebody, Mr. Joseph J. Gorman, for International Color Printing, long before—indeed more than a year before the acquisition by Greater Buffalo Press of the stock of International Color Printing. Mr. Gorman is alive, he is available, amenable to the process of this Court, and there is no basis, I submit, in support of an objection, this hearsay should be received even as against International Color.

The COURT: Now, International Color—

Mr. BERNSTEIN: Is the defendant. This is offered as an admission made by the defendant, as against the defendant who wrote it. If Your Honor will recall, included in the charge of this complaint is a violation of Section 7 of the Clayton Act,

1592 which provides: "No corporation shall acquire the stock of a corporation where the effect may be substantially to lessen competition in some line of commerce."

The COURT: This predates the acquisition?

Mr. RAICHLE: More than a year.

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: There is nothing in Section 7 or anywhere else that makes it wrongdoing on the part of a corporation, International Corporation, when its owners sell stock of the corporation.

Mr. BERNSTEIN: No relief could be offered as against International unless the violation of Section 7 has been established. This is the purpose of establishing the violation of Section 7, as far as International is concerned.

The COURT: I don't want to take any more time. I will reserve decision on that offer, brief it for me and I will make a decision on it.

Mr. RAICHLE: Very well.

1593 The COURT: The reason you must do that, I don't want to take the time to read three pages that I haven't read before. We will resolve it that way. Have Mr. Feldman make a note of it and bring it to my attention at the proper time for final action.

(Thereupon, Government's Exhibit P-53, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Exhibit P-54 for identification, Your Honor, is the minutes they had for a Board of Director's meeting of International Color Printing Company, Inc., dated July 28, 1954. It is offered in evidence.

Mr. STEVENS: Against whom?

Mr. BERNSTEIN: Against all defendants.

Mr. RAICHLE: Well——

Mr. STEVENS: I certainly object to it.

1594 Mr. BERNSTEIN: I offer it for the purpose of showing the action taken by the Board of Directors at that meeting and the Government knows of no other way that it can establish the action taken by a Board of Directors of a corporation except by introducing the minutes of the Board of Directors of that corporation to show the action taken, and not for the truth of any statements that are contained in there, except for the fact that action——

The COURT: These are truly business records, aren't they, kept in the course of the business of the corporation?

Mr. BERNSTEIN: Absolutely, Your Honor.

The COURT: All right. Now, is there any objection, not to their weight, not to the proof, but to the fact they are business records?

Mr. STEVENS: I don't see how they can affect NEA, Your Honor.

The COURT: Relevancy we'll pass on later. I am receiving them as minutes of the corporation.

Mr. STEVENS: Are they only minutes for a meeting of July 28, 1954?

1595 Mr. BERNSTEIN: That is correct.

Mr. STEVENS: You better look.

Mr. BERNSTEIN: Excuse me, I'm sorry, I apologize. The first two pages refer to the minutes of that meeting. The third page refers to a meeting of October 4, 1954. The next page refers to a meeting of October 21, 1954. And the next page refers to a meeting of December 28, 1954.

The COURT: All minutes of the same corporation?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Do you have an objection to those or not? Their relevancy is something else, and their weight. I am talking about the form and their receipt here for the consideration of the Court.

Mr. RAICHLE: They are business records. I believe they are still hearsay as to us.

The COURT: Overruled, received.

Mr. STEVENS: They are not only hearsay to NEA, but I think there certainly has to be some connection between NEA
1596 and International Color Press, because Your Honor will recall that at an earlier stage, in talking about the contract between King, I believe, and International Color Press, I specifically ask if there was any claim that had any pertinency or was being offered against NEA, and Mr. Bernstein was candid enough to say no. He should do likewise at this time.

The COURT: I am going to receive those, gentlemen; overruled.

(Thereupon, Government's Exhibit P-54, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-54 in Evidence

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,

"WILKES-BARRE, PA.,

"July 28, 1954.

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Wednesday, July 28, 1954, at six p.m.

"Present, Joseph J. Gorman, Ralph R. Govin and William S. McLean.

"The president announced he had several meetings with representatives of King Features and one meeting with officials of the Hearst Organization and that they were insistent that this company establish a printing plant in the South, stating quite frankly that they would be required to give their Southern business to our competitors if we failed to do so.

"The reports to stockholders regarding the Coosa Pines location were discussed and the President was authorized to advise the Coosa River Paper Company that this company was interested in a contract for the purchase of newsprint and in having the paper company erect a building for the purpose of leasing it to this company so that this company can set up its presses and equipment and start a printing plant at that location.

"The President was authorized to negotiate a long-term contract with King Features which would assure this company of amortization of the cost of transporting and setting up its presses and other necessary equipment at the Coosa Pines location.

1598 "The President was also directed to determine the cost involved in the establishment of a Southern plant and to negotiate a loan to defray such cost. All contracts and agreements in connection with the establishment of a Southern plant, as well as the financing thereof to be subject to the approval of the Board before the final contracts or evidence of indebtedness are executed or issued.

"There being no further business, the meeting was adjourned."

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,

"WILKES-BARRE, PA.,

"October 4, 1954.

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the offices of the company, 268 George Avenue, Parsons, Wilkes-Barre, Pa., on Monday October 4, 1954, at 2:00 p.m.

"Present: Joseph J. Gorman, John W. Booth and William S. McLean.

"The President announced that he had not been able to come to an agreement with King Features regarding a long-term contract and the erection of a Southern plant, but 1599 expected to have a meeting with representatives of King Features in New York on October 21, 1954, and he would like to have a meeting of the Board of Directors called to meet at the Hotel Biltmore in New York at six p.m. that evening for the purpose of considering the proposals of King Features. The Secretary was directed to send notices to the Directors of said meeting.

"The President reported on the earnings of the company for the third quarter of 1954 and it was decided that a dividend should be declared.

"On motion made and seconded the following resolution was passed:

"RESOLVED: that the sum of \$8,700 be and is hereby appropriated and set aside from the surplus profits of this company for the payment of a quarterly dividend of 17.4% upon its outstanding stock for the third quarter of 1954, said dividend to be paid on the 14th day of October 1954 to stockholders of record as shown by the books of the Company at the close of business on the 10th day of October 1954.

"RESOLVED: Further that the Treasurer of this Company be authorized and instructed to give notice of such dividend and to pay the——"

1600

"INTERNATIONAL COLOR

"PRINTING COMPANY, INC.,

"WILKES-BARRE, PA.,

"October 21, 1954.

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Thursday, October 21, 1954, at six p.m.

"Present: Joseph J. Gorman, May G. Scofield, Ralph R. Govin and William S. McLean.

"The President announced that he had met with representatives of King Features for the better part of the day, and immediately prior to the stockholders meeting, but there were certain details that could not be ironed out and that no contract has as yet been tentatively agreed upon. He informed the stockholders that there were certain additional lists of costs and transportation service that King Features desired before entering into final negotiations. The President was authorized to submit the schedule of costs requested by King Features.

"The President expressed disappointment at having called this meeting, but stated that had he been able to reach an agreement with King Features there were certain things
1601 that would have to be acted upon immediately so that we could get started with the Southern plant.

"A general discussion was held regarding the desirability of the Coosa River area as a location for a Southern plant, transportation savings that would be effected by the location of a plant in that area. Attention was also called to the fact that the operation of the third plant would increase the overhead to the extent that the transportation savings would just about be eliminated. There being no further business, the meeting was adjourned."

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,
"WILKES-BARRE, PA.,

"December 28, 1954.

"MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

"A meeting of the Board of Directors of International Color Printing Company was held, pursuant to notice at the office of the Secretary, 818 Miners National Bank Building, Wilkes-Barre, Pa., at two p.m. on Tuesday, December 28, 1954.

"Those present were: Joseph J. Gorman, John W. Booth, William S. McLean.

1602 "The President announced that the meeting was called for the purpose of declaring a dividend for the fourth quarter of 1954, stating the amount of the profits of the Company for the first eleven months of the year and advising that in his opinion the regular quarterly dividend could be paid.

"On motion duly made and seconded, the following resolution was adopted:

"RESOLVED that the sum of \$8,700 be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% for the fourth quarter of 1954 on its outstanding stock, said dividend to be payable on January 3, 1955, to stockholders of record on the books of the Company at the close of business on January 2, 1955.

"The President called attention to the fact that his contract with the Company, dated November 15, 1949, provided for the payment of 10% of the annual operating profits of the Company, such profits to be computed before deductions and charges for depreciation and before deductions for any interest on notes payable to the Govins.

"The President then stated that due to the fact that 1603 the Company had during the current year paid the 1954 vacation pay due its employees and charged the same against the operating income for such year and had also set up a reserve for a 1955 vacation pay of such employees and charged the same against the operating income for 1954, it resulted in a decrease in the salary to the extent of 10% of the amount of such reserve for the 1955 vacation pay charged against the operating income for 1954.

"The President also called attention to the fact that there would be a substantial deduction from operating income representing charges of costs of moving and setting up equipment in the contemplated Southern plant in that such costs so charged to operating income would further substantially reduce his salary.

"The President advised that he had discussed these matters with Mr. Govin and Mrs. Scofield, the beneficial owners of the stock of the corporation, both of whom are directors of the corporation but were unable to attend this meeting, and that both Mrs. Scofield and Mr. Govin had agreed that in determining the salary payable to the President under his contract the operating profit for such purpose, should be computed before deduction of the 1955 reserve for employees vacation pay during the year 1954 and should hereafter be 1604 computed before deductions for costs of moving and setting up equipment in the contemplated Southern plant.

"Then it was regularly moved and seconded that the following resolution be adopted:

"RESOLVED, whereas the agreement existing between the International Color Printing Company and Joseph J. Gorman, dated the 15th day of November 1949, provides inter alia, for the payment to Mr. Gorman of additional salary in the amount of 10% of the annual operating profits and that such profits shall be computed before deductions and charges for depreciation and before deductions of interest or notes payable to the Govin family; and

"WHEREAS, by resolution dated the 16th day of January 1951, this Company agreed that such additional salary payable to Mr. Gorman shall be computed before deduction of taxes; and

"WHEREAS, the Company has, for the current year, set up a reserve for payment of 1955 vacation pay to its employees and deducted such reserve from its operating profits for the current year in addition to making payment of the vacation pay to its employees due for the year 1954; and

"WHEREAS, this Company contemplates setting up 1605 a Southern plant and the expenditure of large sums of money in moving and setting up some of its equipment in such plant, part of such expenses to be charged to future operating profits;

"NOW, THEREFORE, BE IT RESOLVED that the additional salary pay Joseph J. Gorman under his contract with this Company dated the 15th day of November 1949, shall be computed on the operating profits before deduction and charges for depreciation, before deductions for any interest on notes payable to any members of the Govin family, before deduction of income taxes, before deduction for reserve set up in 1954 for the payment of employees' vacation pay for the year 1955, and hereafter before deductions for charges against operating profits incurred by the reason of the moving or setting up any of the Company's equipment in its contemplated Southern plant.

"There being no further business, the meeting was adjourned."

Mr. BERNSTEIN: P-55, P-56, P-57 are offered. P-55 is a letter dated September 22, 1954, from the Coosa River Newsprint Company to J. J. Gorman, President, International

1606 Color Printing Company. Exhibit P-56 is a contract, a form contract, between Hearst Enterprises, Inc., and Coosa River Newsprint Company, offered as a business record. P-57 is a letter dated November 19, 1954, from the Coosa River Newsprint Company to Mr. R. O. Sternberger of Hearst Enterprises, Inc. P-56, the contract, is offered as a business record. P-57 and P-55 are merely offered for the purpose of explaining that Sylacauga, Alabama, as referred to in the contract when the contract refers to at or nearby Coosa Pines, Alabama. P-55 is offered in explanation of the contract between the parties to the contract.

Mr. RAICHLE: May we record our objections?

The COURT: Yes.

Mr. RAICHLE: I object to those, if Your Honor please, on the grounds they are hearsay, unconnected, no basis has been laid for their receipt, and incorporate all I have argued
1607 before against similar documents.

Mr. STEVENS: I take the same position on behalf of NEA; certainly there is no connection between a Coosa River contract and Hearst Enterprises and NEA.

The COURT: Now, you said the objections heretofore made, or words to that effect; these are not coming in as declarations of any alleged joint co-conspirator, Mr. Raichle. As I understand it, they are coming in here to show that according to the Government, that after the conspiracy came into full being, the fact that certain things happened in the marketplace which they claim resulted from the conspiracy, is that correct?

Mr. STEVENS: Excuse me, Your Honor—

The COURT: I would like to hear from Mr. Bernstein.

Mr. BERNSTEIN: That is not correct, Your Honor. These particular documents provide the evidence that I relied on in answering Your Honor's question this morning as to what the conditions, what the market conditions were, was
1608 there any other opportunity to get rid of this plant, was it a dead horse, and so forth. These are the business transactions that will provide the evidence to support the contention. And the three documents here—the one document that the Government is relying on is P-56, the contract. This is being offered as a business record. It is the Government's contention that where there is a contract in existence between the parties, the best evidence of that is the contract itself. There

no other way to evidence it, and the relevancy of the contract will be shown when all of the evidence in the case is relied on. business record may be offered as against the whole world, particularly a contract, if it is otherwise relevant it is certainly competent. It is only a question of relevancy. The other two documents are between the parties to the contract and go to explain certain terms in the contract which are not evident from a reading of them.

The COURT: Relevancy isn't apparent to me right now. I am going to reserve decision on its receipt, and again you may brief it for me, giving the opportunity to your opponents to reply. I have not done it and do not want to take time to read it now. I want to get them before me. I will have to sweat them out on my own.

Government's Exhibit P-55 for Identification

"SEPTEMBER 22, 1954.

"Air Mail, Special Delivery

Mr. J. J. GORMAN,
President, International Color Printing Company,
8 George Avenue, Wilkes-Barre, Pennsylvania.

"DEAR JOE: As requested in our telephone conversation this morning, I confirm my August 30 discussion with you and Mr. Nicht in New York as follows:

"In the event you should decide to build a comic printing plant in the Southeast, we would undertake to supply you with the newsprint requirements for such plant commencing 1956, up to a maximum annual tonnage to be determined, with the understanding that your newsprint requirements of that plant would be purchased from us exclusively up to the maximum amount of tonnage we agreed to supply. Our paper would be supplied at our regular contract price and terms, the arrangement to be covered by a long-term contract either with Hearst Enterprises, Inc., or if with International Color Printing Company, to be guaranteed either by Hearst Enterprises, Inc., or King Features.

"We would enter into this agreement with the understanding that you would be permitted to truck the newsprint from our plant should you so elect, in which case we would allow the

published carload freight rate or trucking rate to destination, whichever was lower.

"From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually.

1611 "This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama.

"We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for disposal of the tonnage in the event you should decide not to go ahead.

"I understand you are planning to be down this way for further discussions some time next week. We will endeavor to be whatever help we can in connection with your studies.

"Yours very truly,

"COOSA RIVER NEWSPRINT COMPANY,
Vice-President."

Government's Exhibit P-56 for Identification

"In consideration of the mutual covenants and agreements hereinafter set forth,

"COOSA RIVER NEWSPRINT COMPANY

"an Alabama corporation (hereinafter called the Seller), hereby agrees to sell and Hearst Enterprises, Inc., a New York corporation (hereinafter called the Purchaser), hereby agrees to purchase from the Seller of the output of its mill, white standard newsprint paper for use exclusively by International Color Printing Company in its printing plant to be erected at or nearby Coosa Pines, Alabama (hereinafter called the destination), as follows:

"1. QUANTITY.

"The quantity covered by this contract shall be: for 1956, 2,500 tons; for 1957, 8,000 tons, and for the remaining term of the contract, 10,000 tons annually.

"Should International Color Printing Company's requirements exceed the above quantities in any of the years designated, Seller shall have an option to furnish all or any part of the additional white standard newsprint paper needed, such option to be exercised within 30 days after receipt of notice.

Purchaser shall notify seller of the additional quantity of newsprint which will be required by International Color Printing Company at any time. The first such notification shall be made by October 1, 1955.

"The newsprint referred to herein shall be ordered, shipped, and delivered in carload lots in approximately equal monthly installments, noncumulative, during the term of this 1613 agreement.

"2. TERM.

"The initial term of this contract shall be the period beginning January 1, 1956, and ending December 31, 1965. If on or before September 1, 1964, the Seller shall give the Purchaser written notice of Seller's desire to extend the contract for a further term of ten years, then, unless purchaser on or before October 1, 1964, shall notify Seller of his refusal to extend the term, the contract shall be extended for an additional period beginning January 1, 1966, and ending December 31, 1975.

"3. SPECIFICATIONS.

"(a) Basic weight of the paper shall be approximately 32 pounds to 500 sheets, 24 by 36 inches, without reference to International Color Printing Company's production basis. On any individual shipment, five per cent (5%) over or under such basic weight shall constitute good delivery.

"(b) Unless changed by mutual agreement, roll sizes shall be: width, ... 58 ... and ... 29 ... inches; diameter, ... 40 ... inches maximum.

"(c) Purchaser, or International Color Printing Company, shall furnish Seller by the 15th of each month specifications stating the tons of each width and diameter to be supplied during the succeeding month. If Purchaser, or 1614 International Color Printing Company, shall fail to furnish specifications by such date, Seller may manufacture and ship in accordance with specifications last received.

"4. PRICE AND BILLING.

"(a) The Seller's contract market price for standard newsprint paper in effect from time to time shall be the price applicable to all shipments of paper hereunder, but such price at no time shall be more than \$4 per ton in excess of the generally accepted contract market price then in effect for standard newsprint paper manufactured in North America delivered in New York City.

"(b) Such price shall apply per ton of 2,000 pounds f.o.b. Seller's mill and shall be subject to an allowance in lieu of freight equal to the full carload rate or trucking rate, whichever is lower, in effect at the time of shipment for standard newsprint paper shipped from Coosa Pines, Alabama, to destination, but such allowance shall not exceed the carload rate of freight or trucking rate, whichever is lower, in effect at the beginning of the contract term between such points.

"(c) The paper shall be invoiced at the actual weight of rolls when packed for shipment, including wrappers but 1615 excluding cores.

"(d) Cores will be invoiced at 2¢ per inch, and such charge will be credited to Purchaser upon return of cores to Seller's mill in good condition, freight prepaid.

"(e) Any and all taxes, duties, or other charges of any nature imposed by any United States, state or other government authority, which shall become payable by reason of the sale or delivery of merchandise hereunder, shall be deemed for the Purchaser's account, and the Seller may either invoice the same to the Purchaser separately or add the same to the price of merchandise shipped hereunder.

"5. DELIVERY:

"(a) All deliveries under this contract (except in case of billing to Seller's order) shall be made f.o.b. cars at Seller's mill, and title shall pass to Purchaser at time of such delivery.

"(b) Shipments shall be routed by the Seller, at the risk of the Purchaser, but with due regard for Purchaser's preference where practicable.

"6. TERMS OF PAYMENT:

"Payment shall be due net cash on or before the fifteenth day of the month following shipment, in United States funds at Seller's office. Any amount unpaid on the due date shall 1616 bear interest at six percent (6%) per annum, computed from the due date until paid.

"7. CLAIMS.

"(a) No allowance shall be made by the Seller for waste or damage or for paper left on cores.

"(b) The Seller shall not be liable for a claim of any nature unless written notice of such claim is given Seller within ten days after receipt of shipment. The Seller shall not be liable for indirect or consequential damage.

"8. CONTINGENCIES.

"It is agreed that if the Seller's production and/or deliveries of standard newsprint paper be hereafter prevented, impaired, reduced, or restricted by reason of force majeure, strikes, floods, fires, accidents, transportation contingencies, embargoes, or shortages of water, power, labor, necessary materials or supplies, war, acts of God or the public enemy, riot or civil commotion, voluntary or involuntary compliance with any law, prohibition, restraint, order, direction, request, rule or regulation promulgated by any government, Federal or State, or any subdivision or agency thereof, or any other cause beyond
 1617 its control (whether or not of the same character as the foregoing), then during such period the Seller without liability may reduce the quantities herein specified in proportion to the reduction or restrictions upon the Seller's production and/or deliveries, and the Seller shall be required only to apportion the paper which it has available for shipment during such period of reduced production, on a pro rata basis among all customers with whom it then has contracts; and if for any such cause, including the failure of International Color Printing Company to erect a printing plant at or nearby Coosa Pines, Alabama, the International Color Printing Company's ability to accept and/or utilize paper is hereafter impaired, reduced, or restricted, the Purchaser's obligation to accept paper shall be reduced during the period of such disability by such quantity as the International Color Printing Company shall be unable to accept and/or utilize. In any such case the tonnage which the Seller is unable to deliver or the International Color Printing Company to receive and/or utilize shall be eliminated from this agreement and the parties hereto shall be relieved of all liability with respect thereto.

"9. DEFAULT.

"Upon failure of Purchaser to pay any amount when
 1618 due or to fulfill any other provision hereof, the Seller, without demand for payments past due, may at its option:

"(a) Make deliveries subject to payment of sight draft attached to bill of lading without waiving or impairing Seller's right to adopt subsequently the course provided for in clause (b); or

"(b) refuse to furnish any more paper and declare the Purchaser in default and all of the obligations of the Purchaser

hereunder due forthwith, notwithstanding the terms of the agreement, and the Purchaser shall be and remain liable to the Seller for all loss and damage sustained by reason of such failure to pay and/or default.

"Because of the difficulty in ascertaining the loss or damage which the Seller may sustain by reason of any such failure or default by the Purchaser, the sum of \$10 per ton for all paper covered by this contract and undelivered is agreed upon and fixed as liquidated damages, which the Purchaser agrees to pay to the Seller forthwith in addition to all amounts, including interest, for paper and cores delivered and not paid for or returned.

"10. ASSIGNABILITY OF CONTRACT.

"This contract shall not be assigned without the prior
1619 written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or reorganization in which the purchaser participates.

"11. ARBITRATION.

"It is hereby agreed that if at any time any dispute, differences, or question shall arise between the parties hereto or their respective successors or assigns, or any of them, relative to the construction, meaning, or effect of this agreement or any provision hereof or the rights or liabilities of the parties hereto respectively or of their successors or assigns under this agreement in relation to the premises, then every such dispute, difference, or question shall be settled by arbitration in accordance with the rules and procedures, then obtaining, of the American Arbitration Association (with such modification as may be required to comply with the law of Alabama), and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

"12. NOTICES.

"Notices hereunder shall be in writing and may be given by either party to the other by registered mail addressed
1620 as specified below, or to such other address as may be substituted by written notice from either party to the other.

Coosa River Newsprint Company (Seller), Coosa Pines (City), Alabama (State).

Hearst Enterprises, Inc. (Purchaser), New York (City), New York (State).

"A notice so given by registered mail shall be deemed to have been received by the party to whom addressed on the third day following the date of mailing.

"13. AMENDMENT.

"This contract constitutes the entire agreement between the parties hereto and shall not be altered by either party except by consent of both parties in writing executed by their respective representatives duly authorized.

"14. EXECUTION.

"This contract shall be executed at Seller's office in three original counterparts and shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

"This agreement shall not be binding until executed by both parties by their respective representatives and
1621 upon such execution shall be binding upon and issue to the benefit of the parties hereto, and if assigned in accordance with provision of paragraph 10, upon their respective successors and assigns.

"IN WITNESS WHEREOF, Each of the parties has caused this contract to be executed in its behalf by its appropriate representative duly authorized for this purpose, this 8th day of December, 1954. Hearst Enterprises, Inc., Purchaser, by R. O. Sternberger, President; Coosa River Newsprint Company, Seller, by R. M. Watt, Vice-President."

Government's Exhibit P-57 for Identification

"NOVEMBER 19, 1954.

"Mr. R. O. Sternberger, President, Hearst Enterprises, Inc., Room 309-959 Eighth Avenue, New York, New York.

"Dear Bob:

"In accordance with our telephone conversations today, we submit herewith quintuplicate copies of a contract to cover estimated newsprint requirements of a comic printing plant to be erected by International Color Printing Company at or nearby Coosa Pines, Alabama. After executing, kindly return all copies for our completing signatures, following which one copy (or two if desired) will be returned for your con-
1622 tract files.

"Submission of this contract is predicated upon the assumption that said printing plant will be located at Coosa Pines, Childersburg, Sylacauga, Talladega, Anniston or Birmingham, Alabama, or some intermediate point.

"It is understood that the quantities stated are honest estimates of the probable requirements and that we will supply you and you will purchase from us such requirements up to the amounts specified. Excess requirements are first to be offered us, as provided in the contract.

"Notwithstanding the terms of the contract, it is understood we will be agreeable to an arrangement permitting trucking of the tonnage from our mill to International Color Printing Company's printing plant by their own trucks. In that event, title will pass f.o.b. trucks at our mill loading platform, instead of f.o.b. cars, as provided in the contract and the allowance in lieu of freight will be the current published trucking rate to destination above-mentioned, of 15¢ per 100 pounds.

"Yours sincerely,

COOSA RIVER NEWSPRINT COMPANY,
Ralph/8/, Vice-President."

1623 Mr. BERNSTEIN: P-58, Your Honor, is a letter from Joseph J. Gorman, International Color Printing Company, to Frank J. Nicht, King Features Syndicate, dated December 30, 1954. P-58 for identification is offered in evidence—the letter refers to a contract enclosed which covers International printing for King Features, which should be for a period of ten years, talking about ten years in the future. The evidence shows that the contract was ultimately signed, was in effect, during a period of time when Greater Buffalo owned all of the stock in International and this is a background document with respect to that contract.

Mr. RAICHLE: Made a year before we——

The COURT: I'll receive that, overruled.

Mr. STEVENS: I would like to have an objection particularly for NEA on that.

The COURT: Overruled.

1624 (Thereupon, Government's Exhibit P-58, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-58 in Evidence

"DECEMBER 30, 1954.

"Mr. FRANK J. NICHT,
King Features Syndicate, 235 East 45th Street, New York 17,
New York.

"DEAR FRANK: I am enclosing the first form of a contract

to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the Southern Plant but I think you will be perfectly willing to agree that when a Southern Plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation saving will accrue to International Color Printing Company. This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond Plant. I fully realize that unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory profit. Therefore, there should be a further adjustment in price to allow us to what we will both agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate, we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further, but I am giving it to you now so you will have a chance to look it over through the weekend and maybe I will be able to see you some time next week in New York.

"Best Regards,

"Sincerely yours,

JOSEPH J. GORMAN,
International Color Printing Company.

Mr. BERNSTEIN: P-59 is a letter dated February 13, 1956, J. W. Koessler, President, to Mr. Calvin Clyde, Jr., General Manager of the T. B. Butler Publishing Company, Tyler, Texas.

Mr. STEVENS: Objection for NEA. This is a correspondence between Koessler and a manager of some publishing company down there.

The COURT: Received.

(Thereupon, Government's Exhibit P-59, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-59 in Evidence

"FEBRUARY 13, 1956.

"Mr. CALVIN CLYDE, Jr.,
General Manager, The T. B. Butler Publishing Company,
Tyler, Texas.

"DEAR MR. CLYDE: Our building at Lufkin is going up and we expect to be operating in September of 1956.

"We have purchased International Color Printing Company and likely will move some of this business to Lufkin.

"We plan also to print for King Features on such 1627 contracts King holds in Texas but the details of this arrangement have not been worked out.

"My suggestion is that you go along with King Features for the present but limit your contract to the shortest possible period so that you will be free to change if circumstances so arrange themselves that such a move is an advantageous one for you.

"Kindest personal regards,

J. W. KOESSLER, President."

Mr. BERNSTEIN: P-60, Your Honor, is a contract dated April 22, 1958, between King Features Syndicate Division of the Hearst Corporation and International Color Printing Company.

Mr. STEVENS: Objection on behalf of NEA.

Mr. RAICHLE: No objection.

The COURT: Overruled, received.

(Thereupon, Government's Exhibit P-60, previously marked for identification, was received and marked in evidence.

1628

Government's Exhibit P-60 in Evidence

"AGREEMENT Made this 22nd day of April, 1958 between KING FEATURES SYNDICATE, Division of the Hearst Corp., hereinafter called 'Syndicate,' and INTERNATIONAL COLOR PRINTING COMPANY, hereinafter called 'International.'

"WHEREAS Syndicate and International are the parties to an agreement made the 30th day of July, 1955, hereinafter called the 'Contract.'

"NOW, THEREFORE, the parties agree as follows:

"1. International agrees that printing done for Syndicate by Greater Buffalo Press, Inc., Buffalo, New York, shall be

counted toward the printing business which Syndicate is obligated to give to International under Article Second of the Contract.

"2. In the event International discontinues the operation of its plant at Peoria or any other plant, International will so adjust its prices that after the discontinuance of the operation of any such plant total orders for customers of the Syndicate which were being printed at any such plant before the discontinuance of the operation of such plant shall in the aggregate carry no higher net delivered costs, printing and transportation included, than at the time of such discontinuance of operation of such plant.

1629 "3. International Color Printing Company shall be privileged to place the printing orders so transferred from Peoria or any of its printing stations to a printing station of The Greater Buffalo Press, Inc., where, without penalty to the Syndicate, it may enjoy the lowest transportation rate to the printing order's destination.

"4. These provisions do not preclude an increase in transportation rates in the event of specific or general increases in common carrier rates.

"5. In the event International shall offer its printing plant at Wilkes-Barre, Pennsylvania, or any other of its printing plants for sale, International agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer International shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If International desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first
1630 make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as International lowers its price or alters its terms from the original offer.

"IN WITNESS WHEREOF The Hearst Corporation, King Features Syndicate Division, has caused this agreement to be executed by Frank J. Nicht, its General Sales Manager, and International Color Printing Company by Joseph J. Gorman

its President. KING FEATURES SYNDICATE, Division of Hearst Corporation, By Frank J. Nicht, General Sales Manager. INTERNATIONAL COLOR PRINTING CO., By Joseph J. Gorman, President."

Mr. BERNSTEIN: We go to Topic 16, Your Honor. This relates to the share of the market. The Government offers P-63, P-61, P-62. P-63 is a letter from Joseph J. Gorman, dated November 26, 1956, to Mr. Walter Koessler, Greater Buffalo Press, and the letter explains the manner in which a survey of the readyprint market was conducted and the business practice of the way Mr. Gorman did it for International.

1631 P-61 is the readyprint survey explained in P-63. P-62 are computations that have been made from this survey that were introduced on the prior proceeding here. They are being offered for the figures.

Mr. STEVENS: May I ask if these aren't all exhibits which were identified in the examination of Mr. Gorman in connection with the motion for a preliminary injunction? That was true of P-63, it bears Exhibit 14 on it, and was not the readyprint survey also introduced at that time?

Mr. FELDMAN: Yes.

Mr. STEVENS: The only thing you are talking about is the computation.

Mr. FELDMAN: That is right.

Mr. STEVENS: Previously you have taken the position in matters to which we were not a party that they were not being offered against NEA. What is your position on these?

1632 Mr. BERNSTEIN: Well, the Government offers this as against NEA for the limited purpose of showing that the interstate commerce, with which NEA is charged with having conspired to restrain, was not in substantial, was not diminimus. Except for that, the document would not be offered as against NEA because it really relates to the share of the market obtained by Greater Buffalo as a result of the acquisition of International. It is done for that limited purpose, to avoid the calling of a witness with respect to the manner in which the survey was taken. Exhibit P-63 explains the manner in which it was taken, and the Government would have no objection if this be received in lieu of the testimony of the man who prepared the survey. If NEA wishes to cross-examine that witness with respect to the manner in which the survey was

1633 taken, and for its accuracy, the Government would not object.

Mr. STEVENS: You can't put us in that bucket. You are offering evidence; it is up to you to adduce evidence admissible against us. Mr. Feldman erroneously stated each document was not offered in connection with the testimony. This was, because it bears——

Mr. FELDMAN: Which of these documents——

Mr. STEVENS: Which of these documents, Mr. Feldman—— would you state for the record which exhibits were offered at the prior proceedings?

Mr. FELDMAN: P-62 was used. P-63 may not have been used.

Mr. STEVENS: Look here, it has Exhibit 14 on it.

Mr. FELDMAN: That was used in connection with an affidavit, not used during the actual testimony.

Mr. BERNSTEIN: The answer is no, it——

Mr. STEVENS: The answer is it was used because it was stapled to an affidavit submitted to Your Honor. It was argued upon in the course of the proceedings.

1634 Mr. FELDMAN: Let me put it this way: During the actual testimony that took place at the proceedings, what happened is this, originally, the Government put in an affidavit to this Court. It made certain allegations, and this was contained in an affidavit by Raymond Carlson. Mr. Carlson in turn based his affidavit upon a survey conducted by Mr. Gorman, who was President of International. Mr. Gorman, during the years, made a readyprint survey, and attached to his affidavit was a letter which was from Mr. Gorman to Mr. Koesler dated on a particular date and referring to the survey in 1955 and how he compiled the survey, and general background. Now, when the proceeding took place, what happened was, an officer of Greater Buffalo took the stand and submitted a document which stated that based upon the Gorman survey, the Government's figures were not completely accurate and that was put in evidence. Now, for the purpose of this proceeding here, there is attached to a stipulation of the parties, dated September 24, 1965, a statement that the compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955 is contained in document designated 257, that is P-62 by the plaintiff, and marked D-13 in the proceeding heretofore had in this case, as an accurate summary of the Joseph J. Gorman survey for that year.

Mr. STEVENS: That doesn't make it admissible against us.

Mr. FELDMAN: This is the background.

Mr. RAICHLE: Could I have this word, Your Honor? When we were in Your Honor's chambers some weeks or months ago, and the Government announced it was amending its complaint to withdraw the monopoly charge, Mr. Bernstein said the reason for doing so was to drain out of the case discussions as to 1636 what constituted the relevant market and to simplify the issues here so that we would not be concerned with the market. I don't quite understand now how he can get around to a posture where we are talking about surveys and percentages of the market. I thought all that had been taken out of the case. Am I not right about that?

Mr. BERNSTEIN: You are not completely correct. You are right in part, not completely.

The COURT: What is the purpose?

Mr. BERNSTEIN: Part of what you say is correct; part of what you say is not correct.

The COURT: What is the purpose of this offer?

Mr. BERNSTEIN: The purpose of this offer is to show that by the acquisition of International, Greater Buffalo increased its share of the market, for that printing which was done by color comic printers, which had been done for newspapers that didn't do their own printing, from thirty some-odd percent to sixty-three odd percent.

The COURT: What do you say they increased it by 1637 reason of?

Mr. BERNSTEIN: By reason of acquiring the stock of International, yes, Your Honor. Stated another way, the Government—

The COURT: Wait a minute. It isn't a matter, is it, how much more business there was had; it is a question of whether there was a substantial business had? I think they are going to argue that between 1954—maybe they are—and the date of this survey that the business of Greater Buffalo increased.

Mr. BERNSTEIN: No, that is not the point. The Government contends that International at the time the stock was acquired by Greater Buffalo did a certain amount of business, and that Greater Buffalo did a certain amount of business. Now, we have to establish what amount of that business was done. We are going to do that by other figures and the Court will have to

know how does that compare with the business done by other color printers. This is to show that before the acquisition, International had approximately thirty percent of all of the business done by other color comic printers; Greater Buffalo had approximately thirty some-odd percent of that business; and because Greater Buffalo acquired International, it then had sixty some-odd percent. That is all that is offered to show. The readyprint survey and the letter show how the survey was made is merely background material Exhibit P-62, which summarizes the whole thing. That is the only document that the Government is going to rely on with respect to those figures.

Mr. RAICHLE: We have a controversy as to what constitutes the relevant market. I thought it had been drained out of the

Mr. BERNSTEIN: May I explain that, Your Honor, if Your Honor wishes an explanation of that?

The COURT: Yes. I don't know what to do with it because of this question I have of what I did think was drained out of the case, the monopoly feature.

Mr. BERNSTEIN: The Government is not contending—the Government contends when it completes its case—and it proposes to be done in a short while, before four o'clock, Your Honor—the Government contends—

The COURT: We are talking about conspiracy here. If you take it out, what difference does it make about these percentages?

Mr. BERNSTEIN: Not with respect to the conspiracy; it makes no difference, Your Honor. We are talking in this case about three charges. The Government contends that the conduct, which it has been alleging, constituted three offenses. The first offense is a conspiracy to eliminate competition for printed supplements; that violated Section 1. The conspiracy that began solely between King and Greater Buffalo and then was joined by NEA. The Government charges that after NEA joined this conspiracy, the conduct—and after Greater Buffalo acquired International—that conduct was then constituted as well a conspiracy to monopolize.

The COURT: I thought that was out?

Mr. BERNSTEIN: No, Your Honor, it was not out, it was never stated to be out. The Section—may I read it?

The COURT: All right. You are distinguishing here from the monopoly cause that you pleaded?

Mr. BERNSTEIN: That is right. The paragraph of the complaint reads as follows: "Paragraph 24: The defendants, Greater Buffalo, Hearst, NEA and co-conspirator Eastern, and others to the plaintiff unknown, had been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize." That is still in. This is what has been left out: "And the defendant 1641 Greater Buffalo, since about June 1955, has monopolized—" those words are taken out; the rest remain in. "The above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act." In addition to that, on page 11 of the complaint, there is a violation of Section 7 of the Clayton Act charged. With respect to that charge, that charge says: "That the effect of the aforesaid acquisition by Greater Buffalo of the defendant International—" —I'm skipping some of the language—"has been and will continue to be a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade in commerce in the United States, in violation of Section 7 of the Clayton Act; in that competition between the defendants Greater Buffalo and International has been and 1642 will continue to be eliminated." This document is offered to support the Section 7 of the Clayton Act charged and is offered for that purpose solely as against the defendant Greater Buffalo. Now, with respect to the defendant NEA, NEA has been charged with participating in a conspiracy. The Government has to prove that interstate commerce was involved and also that the amount of the interstate commerce that was involved was not insubstantial, and for that limited purpose P-62, the compilation, is offered, with P-63 and P-61 as the background material for the charge.

Mr. STEVENS: If The Court please, I would like to point out the inconsistencies in the position the Government has taken. On our first day together, Tuesday the 12th, when it came time, under their Topic No. 3, to read portions of the testimony of Mr. Hammond, the transcript of his testimony, I ob- 1643 jected that NEA was not a party to the proceeding, it was merely a matter with Greater Buffalo, and we were advised that was offered only against Greater Buffalo. After the

morning recess we came to P-9, a letter dated September 14, from Mr. Gorman to Local 137. Again I objected because that came from testimony which was taken of Mr. Gorman, and I was advised that was offered only against Greater Buffalo. Directly after that, there was a considerable discussion about portions of the testimony of a man named Brader, and again, that was only against Greater Buffalo because we had not participated. Now, by some change, two days later, because they want to attach significance to these and direct charges against NEA, somehow these become admissible. When he talks about

the percentage of the market, the sizable nature of it, I might refer to this exhibit which he is talking about,

P-62. There are three columns. One has "Per Affidavit," which I assume is the affidavit of Mr. Carlson. Another has "Revised by G.B.P." And the third: "Percentage of Total Market." In the first column, the affidavit column as to Buffalo Color Press, or NEA, it says 4.6%. Revised by Greater Buffalo, 3.8%. Percentage of total market 2.5%. I respectfully submit, on the contention they are making, there is no substantial show of commerce involved by NEA in this matter.

The COURT: Then you should consider this helpful.

Mr. STEVENS: We don't want to have it at all. We don't want their help, Your Honor.

The COURT: I am going to reserve decision on that offer.

Mr. BERNSTEIN: May the record show that the stipulation of September 24, 1965, paragraph nine, recites as follows: "The compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955, as contained in document designated 1645 257—"—now P-62—"—by the plaintiff and marked 'D-13': in a proceeding heretofore had in this case is an accurate summary of the Joseph J. Gorman survey for that year."

Mr. STEVENS: We have no criticism of its accuracy.

The COURT: When you brief these things I want these reservations sharply pointed out as problems for me to pass upon, and then I want you to make the best you can of your side, and your opponents will have a chance to reply, and I will have to rule.

Government's Exhibit P-61 for Identification

(This document was not made available to the Reporter.)

GOVERNMENT'S EXHIBIT P-62 FOR IDENTIFICATION

"ANALYSIS OF SUNDAY COMIC SUPPLEMENT MARKET IN TERMS OF 4 PAGE
UNITS. PAGE 4 OF AFFIDAVIT, BY RAYMOND M. CARLSON FOR YEAR 1966,
REVISED BY G.B.P. TO PROPERLY APPLY THE SAME FIGURES.

1646	"1		2
	Per affidavit		
	No. 4's	% market	
ALL SUPPLEMENTS.....	132, 008, 003		
Less:			
Private Plants.....			
COLOR COMIC PRINTERS.....	70, 799, 032	100. 0%	
GREATER BUFFALO PRESS.....	28, 798, 324	40. 6%	
INTERNATIONAL (KING).....	27, 237, 658	38. 4%	
BUFFALO COLORPRESS (NEA).....	3, 289, 032	4. 6%	
EASTERN COLOR.....	3, 681, 339	5. 2%	
ACME COLORPRINT.....	5, 001, 850	7. 1%	
SOUTHERN COLORPRINT.....	477, 714	. 7%	
FORT WORTH.....			
WORLD COLOR.....			
HEARST.....			"

"(See following for columns 3, 4 and 5 of Government's
Exhibit P-62)

1647	"3		4	5
	Revised by GBP			% of
	No. 4's	% mkt.		total market
ALL SUPPLEMENTS.....	130, 092, 885			100. 0%
Less:				
Private plants.....	44, 208, 581			34. 0%
COLOR COMIC PRINTERS.....	85, 884, 304	100. 0%		66. 0%
GREATER BUFFALO PRESS.....	28, 843, 474	31. 4%		20. 8%
INTERNATIONAL (KING).....	27, 237, 658	31. 7%		20. 9%
BUFFALO COLORPRESS (NEA).....	3, 289, 032	3. 8%		2. 5%
EASTERN COLOR.....	3, 681, 339	4. 2%		2. 8%
ACME COLORPRINT.....	5, 001, 714	5. 8%		3. 8%
SOUTHERN COLORPRINT.....	477, 714	. 6%		. 4%
FORT WORTH.....	1, 599, 556	1. 9%		1. 2%
WORLD COLOR.....	753, 559	. 9%		. 6%
HEARST.....	17, 000, 258	19. 7%		13. 0%

"COMMENT

"Column #3 deletes 1,954,850 sections charged to GBP in column #1. These are Canadian newspapers. Column #3 shows Hearst plants as color comic printers for the reason that the Chicago American and Pittsburgh Sun-Telegraph, both non-Hearst newspapers, are printed in the Hearst Chicago Plant. These runs total 2,956,434 copies in 4's.

1648 "Further—Hearst plants having a surplus capacity of 12,500,000, thus are capable of handling this output for King, a Hearst Division. Column #5 is the correct analysis, because it is the total market, the future potential market, and the original source of the industry."

Government's Exhibit P-63 for Identification

"NOVEMBER 26, 1956.

"Mr. WALTER KOESSLER,
Greater Buffalo Press Inc.
302 Grote Street,
Buffalo, New York.

"DEAR WALTER: Each year, for the past ten or fifteen years, we have been preparing what we call a Readyprint Survey to determine what work is being done by each of our competing plants and also what work is still being done by "Own" plants. We get our information from various sources. First of all we write to every Sunday Newspaper in the United States, and all Saturday papers which we think might carry a supplement to obtain copies of their colored supplements. We also
1649 ask questions as to where their supplements are printed.

"About sixty per cent of the newspapers answer immediately giving full information. About twenty per cent come around after we write the second time and a final few papers give us no information whatever. Therefore, the survey is not absolutely accurate but I think close enough to give us a fairly good picture of how things are going.

"I doubt that in '1955' our information was as complete as it might have been because the '1956' figures show that Greater Buffalo has an increase of about ten million four. The additional work from Buffalo Color and World Color accounts for about four million of this. The other four million difference may be the result of the fact that we did not have all of your '1955' business listed. Acme show a gain of 1,000,000

not including Oakland and San Francisco, which I believe Acme is now doing. Therefore, Acme's business is around 8,000,000, as against 4,000,000 a few years ago. Buffalo Color is out of the picture entirely. In our Survey, Fort Worth printing shows up under 'Own Plant'. There has been 1650 little change at Eastern according to the survey figures.

We have gained about 1,000,000. World Color has dropped approximately 700,000 and Southern Color has picked up about 200,000. Wilmington has picked up 206,000. The 'Own Plant' total dropped from 63,000,000 to 61,000,000.

"The totals cannot be absolutely accurate for the reason that sometime newspapers run 12-pages, sometime 10-pages and sometime 16-pages. We use the section that is sent in to us at the time we make the request.

"Because our greatest opportunity for growth lies with the newspapers now listed under 'Own Plant,' I am going to attach a listing separate from what I have already put into the Readyprint Survey (for the purpose of convenience.)

"Will you please have someone check this book over carefully and let us know what may be found regarding Buffalo printing.

"Best regards, Sincerely yours,

"JOSEPH J. GORMAN.

"P.S. I have just noticed that we have Seattle Post Intelligencer listed under Acme—I do not think this is right 1651 and I am rechecking."

(ATTACHED TO P-63)

"SUPPLEMENTS PRINTED IN 'OWN PLANT':

ARKANSAS.....	Little Rock Democrat.....	181, 200
CALIFORNIA.....	Los Angeles Times.....	2, 443, 500
	Los Angeles Examiner (H).....	2, 294, 000
	San Francisco Examiner (H).....	1, 750, 000
	Santa Rosa Press Democrat.....	59, 000
	Vallejo Times.....	42, 600
COLORADO.....	Denver Post.....	1, 043, 400
	Rocky Mountain News.....	960, 000
	Grand Junction Sentinel.....	15, 000
	Pueblo Chieftain Star.....	72, 800
CONNECTICUT.....	Bridgeport Herald.....	186, 400
FLORIDA.....	Daytona Beach News Journal.....	53, 800
	Jacksonville Times Union.....	451, 500
ILLINOIS.....	Chicago Herald American.....	2, 800, 000
	Chicago Tribune.....	4, 100, 000
INDIANA.....	South Bend Tribune.....	450, 400?*
IOWA.....	Des Moines Register Tribune.....	1, 048, 000
KANSAS.....	Great Bend Tribune.....	8, 900
	Parsons Sun.....	8, 900

KENTUCKY.....	NONE.....	
LOUISIANA.....	New Orleans Times Picayune.....	836, 700
	New Orleans State.....	182, 600

1632 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

MARYLAND.....	Baltimore American (H).....	1, 125, 000
MASSACHUSETTS.....	Boston Sun Advertiser (H).....	1, 886, 000
	Springfield City Republican.....	334, 200
MICHIGAN.....	Detroit Times (H).....	1, 826, 650
MINNESOTA.....	Minneapolis Star Tribune.....	1, 879, 500
MISSISSIPPI.....	Meridian Star.....	20, 400
MISSOURI.....	St. Louis Post Dispatch.....	1, 401, 000
	(Roto).....	
MONTANA.....	Billings Gazette.....	72, 400
	Miles City Star.....	33, 800
NEBRASKA.....	Lincoln Journal Star.....	153, 000
	Omaha Herald.....	757, 500
NEW MEXICO.....	Santa Fe, New Mexican.....	11, 800
NEW YORK.....	New York Journal American (H).....	3, 700, 000
	New York Sunday News.....	7, 104, 000
	Albany Times Union (H).....	407, 400
OKLAHOMA.....	E. & I. D. News.....	20, 500
	Muskogee Times Democrat.....	30, 800
	Oklahoma City Oklahoman.....	792, 000
OREGON.....	Eugene Register.....	65, 200
	Portland Oregonian.....	594, 200
	Portland Journal.....	621, 200

1633 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

PENNSYLVANIA.....	Philadelphia Bulletin.....	2, 484, 300
	Philadelphia Enquirer.....	4, 497, 600
	Pittsburgh Press.....	1, 923, 600
	Pittsburgh Sun Telegraph (H).....	1, 575, 000
TENNESSEE.....	Memphis Commercial Appeal.....	768, 000
TEXAS.....	Beaumont Enterprise.....	292, 000
	Galveston Daily News.....	70, 200
	Laredo Times.....	61, 200
	San Antonio Light (H).....	507, 500
UTAH.....	Salt Lake City Tribune.....	531, 600
WASHINGTON.....	Bellingham Herald.....	20, 800
	Seattle Times.....	963, 000
	Spokane Spokesman.....	432, 900
	Walla Walla Union Bulletin.....	16, 100
	Seattle Post Intelligencer (H).....	910, 000
WISCONSIN.....	Milwaukee Journal.....	1, 431, 900
	Milwaukee Sentinel (H).....	791, 700
CANADA.....	Winnipeg Free Press.....	459, 600
	Le Soleil.....	333, 000
	Victoria Daily Colonist.....	65, 600
	Vancouver.....	569, 700
	Windsor Star.....	109, 650
	Saskatoon Star.....	73, 800

1634 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

Regina Leader Post.....	45, 700
Winnipeg Union.....	143, 200
Edmonton Journal.....	185, 800"

"(H)—REPRESENTS HEARST PLANT."

**"11/1/56 PAPERS PRINTED BY INTERNATIONAL COLOR
PRINTING**

WILKES-BARRE

Akron, Ohio, Beacon Journal
Anderson, S.C. Independent
Ashland, Ky., Independent
Asheville, N.C., Citizen Times
Athens, Ohio, Messenger
Augusta, Ga., Chronicle
Austin, Tex., Statesman
Beckley, W. Va., Register
Binghamton, N.Y., Press
Birmingham, Ala., News
Bluefield, W. Va., Telegraph
Bradenton, Fla., Herald
Bristol, Va., Herald Courier
Canton, Ohio, Repository
Charleston, W. Va., Gazette

**1655 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)**

Charleston, W. Va., Mail
Charleston, S.C., Evening Post
Charleston, S.C., News & Courier
Charlotte, N.C., Observer
Chattanooga, Tenn., Times
Clarksburg, W. Va., Exponent Telegram
Clearwater, Fla., Sun
Columbia, S.C., State
Columbus, Ga., Ledger Enquirer
Cumberland, Md., Times
Danville, Va., Register
Dayton, Ohio, News
Decatur, Ala., Daily News
Denton, Tex., Record Chronicle
Durham, N.C., Herald
Detroit, Mich., Polish Daily News
Elizabeth City, N.C., Advance
Elizabethton, Tenn., Star
Fairmont, W. Va., Times
Farmville, Va., Herald
Gadsden, Ala., Times
Garden City, N.Y., Newsday
Greenville, Tenn., Sun

**1656 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)**

Greenville, S.C., News
Harrisburg Patriot News
Henderson, N.C., Dispatch
Hereford, Tex., Brand
Huntington, W. Va., Herald Adv.
Huntsville, Ala., Times
Ironton, Ohio, Tribune
Jackson, Miss., State Times
Jackson, Tenn., Sun
Jamaica, N.Y., Press
Kannapolis, N.C., Independent
Kingsport, Tenn., Times
Knoxville, Tenn., Journal

Lake Charles, La., Amer. Press
 Las Cruces, N.M., Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio, News
 Lynchburg, Va. News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga., Telegraph
 Marion, Ind., Tribune
 Martinsville, Va. Bulletin

1657 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
 (Continued)

McKeesport, Pa., Daily Advance
 Miami, Fla., Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Morehead City, N.C., News Times
 Middletown, N.Y., Record
 Newark, N.J., Ledger
 New Bedford, Mass., Std. Times
 Norfolk, Va., Pilot
 Orlando, Fla., Sentinel
 Pulaski, Va., S.W. Times
 Parkersburg, W. Va. News
 Portsmouth Times
 Philadelphia, Pa., Mayfair Times
 Pittsburgh, Pa., Sun-Telegraph
 Port Arthur, Tex., News
 Portland, Maine, Telegram
 Raleigh, N.C., News & Observer
 Raleigh, N.C., Times
 Reading, Penna., Eagle
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times

1658 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
 (Continued)

Rome, Va., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartansburg, S.C., Herald
 St. Petersburg, Fla., Times
 Trenton, N.J., Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C., Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Wash., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa., Independent
 Wilmington, N.C., Star News
 Winston Salem, N.C., Journal

SPANISH

Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El Pais
 Havana Excelsior
 Havana El Muncho

1659 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)

Havana Informacion
Venezuela, El. National, Sun. Tribune
Venezuela, La., Esfera
San Juan, El. Mundo
Panama City American (Printed in English)
Tampico, Mexico
Caracas, Venezuela, Printed in English"

Mr. BERNSTEIN: With respect to P-64 and P-65, Your Honor; P-64 is a letter from J. W. Koessler, President of Greater Buffalo Press, to Mr. E. R. McDowell, Publisher of the Lima News, Lima, Ohio, dated October 11, 1956; and P-65 is a memorandum from R. K. Rogers, who has been identified as having been a salesman with King Features Syndicate, addressed to Mr. Nicht, dated October 2, 1956. That is offered in connection with P-64, to show the action taken with respect to P-64.

Mr. STEVENS: NEA objects to each of these documents.

Mr. BERNSTEIN: It is offered against NEA, subject 1660 to the general connection rule; as against Greater Buffalo, P-64 is offered and P-65 is offered as under the rule of explaining or relating to a document that is admitted in evidence.

Mr. RAICHLE: I don't object to 64, it is a letter from Mr. Koessler. I don't know about the handwriting.

Mr. BERNSTEIN: The stipulation was that the document was authentic, that would include the handwriting.

Mr. MOORE: No, read the stipulation, it came from our files.

Mr. BERNSTEIN: I would assume if the document came from your files it had the handwriting on it when it came from the files.

Mr. MOORE: That doesn't qualify the handwriting.

Mr. BERNSTEIN: It says—the Court can note the comments on the bottom of 64.

Mr. RAICHLE: That is innocuous anyway. I don't take serious objection to the letter. Let the whole business in.

The COURT: All right, received.

1661 Mr. RAICHLE: Excuse me, Your Honor, I do object to the other document, P-65. That is in the category of these other things.

The COURT: That is only offered as an explanation of the contents of the preceding exhibit?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: But the preceding exhibit is a letter from Mr. Koessler to somebody. This is not an explanation by Mr. Koessler, it's a construction put on the letter by Mr. Rogers in a memo to this man, Nicht. It comes within the category of the documents Your Honor has reserved on.

Mr. BERNSTEIN: P-65 is not offered as a construction of the language, it is offered for the purpose of showing the action taken with respect to 64.

Mr. RAICHLE: It is hearsay, certainly unconnected with us. I urge Your Honor to reserve on that, we will cover that in a memorandum too.

1662 The COURT: Let's do that. We'll receive the first exhibit P-64, and reserve on P-65 in the interest of moving along. We will have to make a note of that.

Mr. STEVENS: Reserved in connection with us, Your Honor?

The COURT: Yes. I take it you consider NEA in the conspiracy full blown?

Mr. BERNSTEIN: Oh, yes, Your Honor.

The COURT: That is your position?

Mr. BERNSTEIN: Yes, Your Honor.

(Thereupon, Government's Exhibit P-64, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-64 in Evidence

"OCTOBER 11, 1956.

"MR. E. R. McDOWELL, *Publisher*
The Lima News, Lima, Ohio

"DEAR MR. McDOWELL: Our newsprint supply at this time does not permit our presenting a proposal on printing the comics for the Lima News.

1663 "Thank you for calling upon us and I trust we may have such an opportunity at some later date.

"Very truly yours,

"J. W. KOESSLER,
President."

Government's Exhibit P-65 for Identification:

"OCTOBER 2, 1956.

"From: R. K. Rogers

"To: Mr. FJ Nicht:

"From: R. K. Rogers

"DEAR MR. NICHT: We have a cancellation from the Lima,

O. News on their readyprint arrangement with us. I checked but find nothing to indicate either on our records or through the Greater Buffalo Printing schedules that the NEWS also receives an NEA section. Lima is owned by Mr. Hoiless and Clarence tells me other sections in the Greater Buffalo Press's plant. Whether these are NEA printings or direct arrangements with Greater Buffalo, we do not know.

"The important point at this juncture is to take some precautionary action with Mr. Koessler to avoid him giving a price to Lima which might result in our losing the business.

"Sincerely,

"R. K. ROGERS."

Mr. BERNSTEIN: I propose to move, as the last order 1664 of business, that all of the documents offered as against NEA, subject to connection, now be received. I gather, Your Honor, you would rather have that argued in connection with the over-all argument.

The COURT: Have you finished with item 16?

Mr. BERNSTEIN: I'll be finished soon.

The COURT: Had you finished with item 16 or not?

Mr. BERNSTEIN: No—yes, Your Honor. Excuse me, excuse me. The Government offers P-69. P-69 is an affidavit by the resident controller of King Features Syndicate of the Hearst Corporation, and it purports to show figures from the books. The Government offers it subject to correction or verification and in the event that the defendants have any objection to the receipt of these figures in this form, the Government reserves the right to call the witness and subpoena the books and establish the figures in that fashion, rather than by the 1665 affidavit fashion.

Mr. STEVENS: I thought you told me at the recess you were not offering this document against NEA.

Mr. BERNSTEIN: The Government will not offer this affidavit, P-69, against NEA.

Mr. MOORE: If the Court please, we certainly do object to the proof in this form. Let me state; we are not being captious about it; I was asked some two or three weeks ago if, on this question of the Hearst business, the amount of business Hearst did, so that we could expedite the trial, if I would make a study of the answers Hearst made to certain interrogatories submitted by the Government, while Hearst was still in the case. I said I would. We undertook to do that at considerable trouble, some-

thing we could check from our own records. We are perfectly willing, we have done that and satisfied ourselves as to it, and we are perfectly willing to state that the answers that Hearst has given the Government to these interrogatories were the things we were asked to stipulate, we will. But now I am presented with an affidavit as to what Hearst's business was during the years 1953, 1954 and 1955, and an affidavit, which just states that these records establish that this income represented payments for printed supplements exclusive of any charge for the publication rights of the features and/or comics contained in the printed supplements. I have no way of checking this from my records and on the Government's own theory on the case I don't see how Hearst can. They claim in their complaint that Hearst tied the price of the comics to the printing. I think this is proof that is insusceptible of ever being made. I will stipulate to what I was asked to stipulate to, not to this affidavit.

1667 Mr. RAICHLE: Put the answers to the interrogatories in evidence.

Mr. MOORE: Isn't that what you asked me to do?

Mr. FELDMAN: No. The interrogatories doesn't in any way refer to that.

The COURT: Why do you have an objection to the affidavit?

Mr. BERNSTEIN: There is no question about it. The Government requests leave, at a later date, to offer the evidence on P-69 in proper form and then we will offer that in evidence. The defendants, for its part, can be alerted that these are the facts that the Government contends and it will offer the proof in competent fashion.

Mr. RAICHLE: We are alerted.

Mr. BERNSTEIN: I will withdraw the offer of P-69.

The COURT: I don't know where that leaves our time schedule. That sounds like a complicated piece of proof to me, live proof. Maybe you can talk about it among yourselves.

Mr. BERNSTEIN: I would think we might be able to find some way to do that. We will try anyway.

Mr. RAICHLE: We are in the spirit of negotiation.

Does that do it?

Mr. BERNSTEIN: Almost through. We are on another topic; we are on Topic 18—I skipped 17—we are on Topic 18, Your Honor, the contention that competition with Eastern had been eliminated and the Government offers in evidence P-67 and

P-68. I believe they fall into the same category of the business records rules that you have rejected. They will be offered as declarations of co-conspirators.

The COURT: All right.

Mr. RAICHLE: Same objection.

The COURT: Same ruling.

Mr. BERNSTEIN: I take it Your Honor's ruling is that you will take them under advisement?

The COURT: That is correct.

Government's Exhibit P-67 for Identification

"AUGUST 4, 1955.

"MEMORANDUM

"MESSRS. KOESSLER and LALORE and I had a 1669 luncheon session yesterday and we discussed many things.

"Mr. Koessler knows that we are trying to complete our contract with International Color Printing Company. He doesn't appear to be at all concerned about this. He also told me that he would prefer if we would continue to deal with ICP, that is, Mr. Gorman, just as we have heretofore. Seems to place great confidence in Joe.

"I brought up the newsprint situation. Apparently he's fixed all right now and he doesn't seem to be concerned about any real shortage. He seemed to think the present tightness is only temporary.

"When we get underway at Coosa River, Koessler will undoubtedly want to transfer Atlanta, Nashville and Mobile to that plant. That would undoubtedly require more paper because they're good sized runs.

"Mr. Koessler told me that he expected to get Coosa River and Lufkin in operation in about a year. He seemed to 1670 think the plans Joe had in mind for a building provided for a setup that wasn't big enough. Unless I am mistaken, Koessler figures on spending about \$500,000 on a building at Coosa River.

"I told him about my recent visit with Bill Pape and Ham Moore.

"He confirmed my belief that we were to get 50c per thousand on the supplements he is presently printing in Texas, when these runs are transferred to Lufkin. We talked about the

transfer of the Dallas Times Herald and Houston Post runs to Lufkin and he brought up the Fort Worth Star-Telegram matter. This is something we should keep after.

"We also discussed Comic Weekly Printing and I asked him to give me a real proposition. From that point I will see what progress I can make.

"Altogether, our visit was mighty pleasant and helpful all around, I believe.

"FJN:Mec"

Government's Exhibit P-68 for Identification

"AUGUST 17, 1955.

"MEMORANDUM

"I spent a few hours with Ham Moore of Eastern
1671 Color Printing Company yesterday at luncheon (later on Mr. Thompson of the Mirror joined us).

"I think our talk has propelled us somewhat in the direction of an arrangement of mutual advantage.

"Ham is to give me prices on Portland, Maine and New Bedford Printing. I will take up the Boston Post Printing matter with Greater Buffalo.

"Ham seemed to like the idea of our giving them Portland and New Bedford, they to turn over Greensboro, N.C. to us. I just have a hunch that we are not likely to have much trouble so far as Eastern's going after our business is concerned and this could work in reverse, too so far as they are concerned.

"I pointed out that this would leave Eastern free to increase their readyprint rates which Ham admits need plenty of increasing.

"I have a hunch too that Eastern is very likely to extend little cooperation to NEA.

"I also insinuated to him the possibility of some kind
1672 of a connection with us and it might be one that could be worked out on the basis of his continuing to represent Eastern at the same time.

"FJN:mec."

Mr. BERNSTEIN: I offer P-66, another one of the memoranda from F. J. Nicht to Ward Greene, dated November 4, 1955, and

offered under the co-conspirator rule, and I take it Your Honor will take that under advisement?

The COURT: Yes, same ruling.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

Government's Exhibit P-66 for Identification

"NOVEMBER 4, 1955.

"TO: WARDE GREENE

"FROM: F. J. NICHT

"DEAR MR. GREENE: For some time past I have had conversations with Eastern Color Printing Company at Waterbury and at New York, the object being to see if an arrangement couldn't be worked out where rate cutting or price cutting would be eliminated and also to stop raiding one another. As a result of my last conversation with these people, which 1673 was yesterday, I think we have been able to conclude matters very satisfactorily.

"From now on we have every reason to believe that Eastern will not take our plants, and we won't take theirs. We, of course are the larger target. As a result, Eastern now has a green light to raise their printing prices and quite substantially which is a very constructive move. We can do the same thing in certain spots because as a result of our recent deal with Greater Buffalo Press and this one with Eastern, we will have little competition to fear until we reach the territory of World Color Printing Company at St. Louis.

"Sincerely yours,

"F. J. NICHT."

Mr. BERNSTEIN: The Government offers in evidence from the deposition of Frank Nicht, page 145 through 149, except for the colloquy of counsel.

The COURT: What was 5-B, one of the letters or memos of Mr. Nicht's?

Mr. BERNSTEIN: Yes, Your Honor, 5-B.

The COURT: 5-B and C the same thing; right?

Mr. BERNSTEIN: Yes, Your Honor.

1674 The COURT: These refer to certain exhibits that were in before the parties on deposition, they are the same inter-office memoranda?

Mr. BERNSTEIN: Yes, Your Honor.

Mr. RAICHLE: I would object to them and move to strike it out, if I am not getting ahead of Your Honor. Page 148: "Q. Do you recall whether you had any discussions with him about the understanding subsequently got from Mr. Moore? "A. It's very likely." From a live witness you wouldn't take that.

Mr. BERNSTEIN: It goes to the weight, not to the competence.

Mr. RAICHLE: No, it doesn't at all. It is not admissible.

The COURT: Do you object?

Mr. RAICHLE: Yes.

The COURT: Sustained. Now, Mr. Noel, page 148 of this Nicht testimony, at folio 20: "Do you recall—" and there was an answer, and there is an objection to that question and answer, and I sustain the objection and make that ruling. Anything else contained in 145 to 149?

Mr. RAICHLE: No.

"Q. Do you recall also testifying that the prices reached, whether they be as to features or whether they be as to the color comic supplement printing, are usually arrived at after negotiations with the salesmen and the particular newspaper publisher involved?

"A. I got off there.

"Q. All right. The prices reached as to the sale of either features or color comic supplements are arrived at as the result of negotiations?

"A. That's right.

"Q. These negotiations are usually between your salesman or King Features Syndicate and the particular publisher involved?

"A. That's right, sir.

"Q. In the past, have publishers gotten even better prices for features if purchased along with color comic supplements, and vice versa, gotten better prices for color comic supplements if they purchased features simultaneously?

1676 "A. Yes, sir.

"Q. Mr. Nicht, you testified about the arrangements you had with Koessler of Greater Buffalo and also Mr. Moore of Eastern. Did any other person or persons at King Features Syndicate know about such arrangements other than yourself?

"A. My superiors.

"Q. Who were your superiors at that time?

"A. The general manager of the Syndicate—Mr. Greene at one time, currently Mr. McLearn and Mr. Gortatowsky.

"Q. In regard to your arrangement with Eastern, did you at any time ever impart such knowledge to Mr. Koessler?

"A. I don't recall that without being helped.

"Q. Do you recall ever discussing with Mr. Koessler Eastern?

"A. That could have been discussed.

"Q. You don't presently know?

"A. I don't recollect, no, sir.

"Q. Before the recess, Mr. Nicht, I asked you whether you informed Mr. Koessler of your arrangement with Eastern. I show you now Plaintiff's Exhibit 5-B and ask you to refer to the place which has a clip (indicating), and I also show 1677 you Plaintiff's Exhibit 5-D and 5-C, and ask you to read those to yourself and then tell me if that refreshes your memory as to whether or not you imparted to Mr. Koessler information about your arrangement with Eastern?

"A. Yes, sir, this refreshes my memory.

"Q. It does?

"A. Yes, sir.

"Q. I ask you again, sir, do you recall now whether or not you imparted information about your arrangement with Mr. Moore of Eastern to Mr. Koessler?

"A. Yes, sir.

"Q. When did you impart such information to him, can you recall?

"A. I'd have to look at that again.

"Q. All right.

"A. In the last part of 1955.

"Q. Prior to making your arrangement with Mr. Moore of Eastern, did you discuss Eastern and the possibility of making such an arrangement with Mr. Koessler?

"The WITNESS: Will you repeat that, please?

"(The question was read.)

1678 "Q. Before you saw Mr. Moore or Eastern or anyone else of Eastern, did you discuss with Mr. Koessler you were going to see representatives of Eastern?

"A. I am not certain about that, but I would doubt it. I could have happened.

"Q. I show you Plaintiff's Exhibit 5-B and ask you now whether this refreshes your recollection?

"A. It does in a way. That is not clear to me now, any longer.

"Q. In other words, it does not refresh your memory?

"A. No. I don't know what that means.

"Q. Would you direct your attention, then, to the first paragraph on there also?

"A. This refers exclusively to Greater Buffalo Press.

"Q. I know that, sir.

"A. That doesn't help me much.

"Q. Do you recall now whether you had any discussions with Mr. Koessler about Eastern?

"A. I think so, yes."

Mr. BERNSTEIN: The Government offers Exhibit P-9, which previously had been offered and rejected, as against the defendant International only, as an admission by the defendant International.

Mr. RAICHLE: Well —

The COURT: This is the Printing Union?

Mr. RAICHLE: I object to that.

Mr. STEVENS: Objection for NEA.

Mr. BERNSTEIN: It is offered against International only as an admission by International.

Mr. RAICHLE: If the Court please, in all of these conspiracy cases an admission by a conspirator is excluded if it is the character of an admission that reflects upon other conspirators, even if it is offered only against one. In this case, International isn't charged with any wrongdoing. What possible thing can it be to—it is a pretext—I don't mean anything invidious—it is a pretext to get something in that is otherwise not admissible.

Mr. BERNSTEIN: This is relevant to the Section 7 charge.

The COURT: I don't know how many pages there are I am going to reserve decision on that offer and listen to your arguments.

Government's Exhibit P-9 for Identification

"SEPTEMBER 14, 1954.

"LOCAL #137,
Printing Pressmen and Assistants Union
Attention: Scale Committee.

"GENTLEMEN: When you met with me last week we discussed many of our problems at great length, but there were four questions which you asked that I answer more fully and in writing. These four questions were:

"1. If competition has been as unfair as claimed by me, why have not our competitors taken work from us?

"2. If competition has been so strenuous as to be almost impossible to meet, why have we found it necessary to add new presses?

"3. Is production per hour now running better than ever in our history, and was August the best month we ever had from a production standpoint?

1681 "4. How do our rates and manning compare with corresponding rates and manning in competing plants?

"I believe there were other questions which I will think of as I go along and answer as truthfully as I can.

"Let us take the first question: IF COMPETITION HAS BEEN AS UNFAIR AS CLAIMED BY ME, WHY HAVE NOT OUR COMPETITORS TAKEN WORK FROM US? I am attaching a table listing the work which we formerly printed, since 1941, which we have lost to competitors and to newspapers doing their own work. I summarize as follows:

"To Buffalo Color Press 27,200; to Southern Color 457,150; to Acme 214,100; to Eastern Color 488,000; to Greater Buffalo 3,638,900; to Fort Worth 612,000, to Wilmington Star 48,000; to World Color 269,250; total 8,682,600.

"This does not take into consideration the runs lost before 1941 such as Montreal Standard, Louisville Courier Journal, Buffalo Courier Express and a number of others. Nor does it take into consideration the booklets which we have lost to other competing plants, the total of which would be some-
1682 where in the neighborhood of 1,000,000 four page sections. Summing up. Since 1941 we have lost to competing plants close to 10,000,000 four page sections.

"What about new business gained by our principal competitors during that period, other than the business taken from us? As of April 25, 1951, Greater Buffalo Press was printing 24,000,000 four page sections weekly. Today the Greater Buffalo total is well over 35,000,000, exclusive of booklets.

"Since Greater Buffalo took a total of approximately 3,700,000 from us, where did the balance of approximately 7,000,000 come from?

"During the period from 1941 to 1946, while Dunkirk was running open shop, and since 1946, while Dunkirk was paying a rate much lower than we, it was a fairly simple matter for our competitor to outbid us on all new business and generally he went after the large runs, leaving us to pick up the smaller runs, with heavy plate changes.

"Since it is true that our competitor had considerably lower rates and more favorable manning during the period from 1941 to 1953 why didn't we lose more business to him?

1683 "There are several reasons why. Paper was scarce and he took new business rather than supplements for which he would have to compete. Now that most of the possibilities in new business have been used up he is going after the work now in plants such as ours which have higher rates, higher manning and more unfavorable conditions.

"2. IF COMPETITION HAS BEEN SO STRENUOUS AS TO BE ALMOST IMPOSSIBLE TO MEET, WHY HAVE WE FOUND IT NECESSARY TO ADD NEW PRESSES DURING THE PAST SEVERAL YEARS?

"There are several answers to this question:

"(A) We put one press in to replace 1247 which had become obsolete

"(B) Net production per hour is considerably lower than several years ago and therefore we need more presses to do the same amount of work.

"In the first eight months of 1951 we printed in Wilkes-Barre at the rate of 16,528 per hour. For the first eight months of 1954 we printed at the rate of 15,705 per hour. We have lost 823 per hour—and therefore we have to have more presses to do the same work.

1684 "Another reason for necessity to install more presses was the change in press hours from 40 to 37½. By reducing the work week we lost nine hours on each press and just to make up this alone it would have been necessary to add a single width press. If we had printed in August, 1954, at the same rate as August, 1951, we would have required 52 less press hours each week in 1954 than we actually used. If we printed for the first eight months of 1954 at the same rate we were printing for the first eight months of 1951, we would have required 82 hours less per week.

"It is clear that the increase in number of presses was made necessary very largely by: Need for greater flexibility; lower net per hour; shorter work week.

"In August, 1951, we were casting fewer plates per 50,000 and registering fewer plates for each thousand printed. It is necessary to cast 218 more plates per week in 1954 than it was in 1951—using the 1951 ratio.

"In the meantime our competitors plates for 50,000 has not increased because, with his favorable rates and more
1685 favorable manning, it is possible for him to be selective when he goes after new business.

"3. IS PRODUCTION PER PRESS HOUR NOW RUNNING BETTTR THAN EVER IN OUR HISTORY? WAS AUGUST THE BEST MONTH WE EVER HAD FROM PRODUCTION STANDPOINT?"

"I think that when I answered question No. 2, I also told you the reply to question No. 3. We are definitely running far behind 1951 so far as press production per hour is concerned.

"4. HOW DO OUR RATES AND CONDITIONS COMPARE WITH CORRESPONDING RATES AND CONDITIONS IN COMPETING PLANTS?"

"You could probably answer this question better than I, but I will describe the rates and conditions as I understand them.

"Our competition is coming from the following principal competitors: Greater Buffalo Press; Acme Color Printing Company; World Color Printing Company at Sparta; and Eastern Color Printing Company at Waterbury.

"For convenience of discussion I am attaching a table showing what I believe to be the rates, manning and conditions existing at this time in each readyprint plant. It is quite clear that our average rate is higher, we used four men, especially on odd size runs such as 10s, 12s, 14s and 20s, and our contract provides much more in the way of other fringe benefits. According to my calculation our fringe benefit costs us approximately 28c per hour overall which is very definitely higher than the average in competing plants.

"What you and I are interested in today is keeping the work we have and obtaining new work if possible.

"Any differential in rates and manning is bound to work against us. In the separate schedule I am giving you a breakdown of the runs we have lost during the past 13 years. You know that in the past month we lost Erie times, Erie Dispatch, Youngstown Vindicator and Toledo Blade to Dunkirk. Two of these runs, Youngstown and Toledo, we have been running for over 25 years, and I believe we have been printing Erie for approximately 20 years.

"Let us study the affect of difference in rates and manning on the cost of printing these particular runs.

1687 "Assuming that running time and registry time are the same the labor cost for pressmen-in-charge and journeymen was higher in Wilkes-Barre than in Dunkirk by \$134.37, when the 12 page supplements were printed.

"When supplements were printed as 14 page sections the supplements for these newspapers could be printed cheaper in Dunkirk by \$250.00 weekly. As 16 pages the difference drops to approximately \$60.00, but when printed as 18 pages the difference is \$299.00.

"Because our competitor knows that we are at a distinct disadvantage when printing 10s, 14s, 18s and 20s he goes to the newspapers and emphasizes the fact that he can print odd sizes cheaper than we and the result is we lose the business

"TO COMPETE SUCCESSFULLY WITH BUFFALO, DUNKIRK AND WATERBURY WE MUST HAVE A MORE ADVANTAGEOUS MANNING TABLE FOR ODD SIZE RUNS.

"You understand of course that no other plant used two pressmen-in-charge on a double width press except possibly when two folders are in operation.

1688 "It is my calculation that the press hour cost for the pressmen-in-charge and journeymen when printing various size runs is higher in Wilkes-Barre than in Dunkirk by the following amounts;

"For 12 page standards, Wilkes-Barre \$4.38 higher per press hour.

"For 14 page standards, Wilkes-Barre higher by \$7.22 per press hour.

"For 16 page standards, Wilkes-Barre higher by .96 per press hour.

"For 18 page standards, Wilkes-Barre higher by \$13.29 per press hour.

"Let us discuss these figures a little further. Let us see what the difference is in cost per thousand four page sections, taking into consideration pressmen-in-charge and journeymen only.

"Wilkes-Barre cost is approximately 25c per thousand higher for 12 page standards.

"Wilkes-Barre cost is approximately 45c per thousand higher for 14 page standards.

"Wilkes-Barre cost is approximately 6c per thousand higher for 16 page standards.

1689 "Wilkes-Barre cost is approximately 75c per thousand higher for 18 page standards.

"When you consider the fact that when running 12 page standards we have as many as four flyboys and when running 14 page standards we have 6 flyboys, when not more than three

can actually work on the deliveries, you can readily see that actual differences in cost are even greater than outlined above.

"You are probably aware of the fact that Dunkirk has cut its labor costs very sharply by use of spiraling trays by the use of which flyboys do all of the stacking on trays. I do not know how many flyboys they use—the contract does not specify, but I know it is not more than two per double width press.

"From time to time it has been pointed out to me that Greater Buffalo registers faster than Wilkes-Barre by use of pre-registry machines. This may be true, but the fact remains that even if both plants were registering exactly the same the advantage would lie with the plant which has the lower labor cost per press hour.

1690 "Among other differences in contract, pointed out in accompanying table, are the following: The right of a man to make up time the following week, which right exists in Wilkes-Barre but not in other plants. The claimed right for substitutes to work doubles to make up time. No other contract specifies this right, and I do not believe ours does either.

"So far as I can determine our principal competitor has no sick leave nor employees club. All told these two items are now costing us approximately \$60,000.00 per year and the cost per hour is included in the fringe clause total of 28¢ referred to above.

"There is probably no need to again emphasize the fact that Greater Buffalo and Dunkirk lie between two transportation zones and are thus able to ship much cheaper than Wilkes-Barre or Peoria. As I have stated so frequently in letters to employees this situation is more or less an accident of birth, but it works to our disadvantage just the same.

"The same might apply to the fact that Dunkirk and Buffalo lie on the Great Lakes and therefore paper is \$1.00 per ton cheaper.

1691 "We may consider it a disadvantage that we have a selling agent. One of the reasons why we have held much of our business, despite differences in labor cost, is King Features' ability to hold printing in many instances by control of circulation rights of features. Of course this is not always possible and certainly no one can blame King Features for sending work elsewhere when it is not possible for us to offer a competing price.

"All of this has been repeated in letter after letter, over and over again, and by me verbally to all members of the various unions. It has been stated that I cried 'wolf' for a long period of time and nothing happened. If the loss of 10,000,000 four page sections since 1941 can be construed by you as 'nothing happened' then I must admit that I am at a loss to understand your viewpoint. Much has happened and more will happen, to our disadvantage and to yours, unless equalization is brought about meeting.

"JOSEPH J. GORMAN,
"HLM.

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1693 Sick Leave.....	5
Shift Foreman.....	7
Substitutes.....	7
Sick-Accident Insurance Insurance.....	5
Variations.....	3

DATES OF CONTRACTS

	EFFECTIVE date	EXPIRATION date
GREATER BUFFALO.....	8/21/53	8/21/54
DUNKIRK.....	8/1/54	
WATERBURY.....	2/28/54	Extended
SPARTA.....	5/7/51	12/19/54
WILMINGTON.....		
ACME.....	8/8/53	8/8/54
WILKES-BARRE ICPCO.....	3/1/53	1/15/54

HOURS PER WEEK

	Day	Night	3rd shift	Average
GREATER BUFFALO.....	37½	37½	35	36½
DUNKIRK.....	37½	37½	37½	37½
WATERBURY.....	40	37½	35	37½
SPARTA.....	37½	37½	37 ½	37½
WILMINGTON.....	37½	37½	37 ½	37½
ACME.....	37½	37½	37 ½	37½
WILKES-BARRE ICPCO.....	37½	37½	37½	37½

1994

JOURNEYMEN RATES

	Weekly Average	Hourly Average
GREATER BUFFALO.....	\$108.79	2,978 (sic)
DUNKIRK.....	99.42	2,650 (sic)
WATERBURY.....	100.00	2,666 (sic)
SPARTA.....	87.48	2,330
WILMINGTON.....		
ACME.....	100.63	2,6835
WILKES-BARRE ICPCO.....	106.24	2,8330

PRESSMEN-IN-CHARGE RATES

	Weekly	Hr. Average
GREATER BUFFALO.....	\$116.20	3.166
DUNKIRK.....	114.42	3.050
WATERBURY.....	106.00	2.826
SPARTA.....	???	???
WILMINGTON.....		
ACME.....	106.35	2.836
WILKES-BARRE ICPCO.....	114.85	3.0626

OVERTIME

	Daily	Sunday
GREATER BUFFALO.....	1½	Double.
DUNKIRK.....	1½	Double.
WATERBURY.....	1½	Double.
SPARTA.....	1½	Double.
WILMINGTON.....	1½	Double.
ACME.....	1½	Double.
WILKES-BARRE ICPCO.....	1½	Double.

HOLIDAYS

1895

	NUMBER	HOW PAID
GREATER BUFFALO.....	6	Double when worked.
DUNKIRK.....	6	Double when worked.
WATERBURY.....	6	Double when worked.
SPARTA.....	6	
WILMINGTON.....	6	
ACME.....	6	1½ first seven hours.
WILKES-BARRE ICPCO.....	6	Triple when worked.

VACATIONS

GREATER BUFFALO.....	Two weeks after 1 year, 3 weeks after 5 years
DUNKIRK.....	Two weeks after 1 year's service, 3 weeks after 6½ years
WATERBURY.....	1 week after one year, 2 weeks after 3 years
SPARTA.....	1 week after 1 year, 2 weeks after 3 years
WILMINGTON.....	1 week after one year, 2 weeks after 2 years
ACME.....	2 weeks after 1 year, 3 weeks after 10 years
WILKES-BARRE ICPCO.....	

APPRENTICE RATIO AND RATE

	RATIO	RATE
GREATER BUFFALO.....	1 to 10.....	50% of J.M. Up.
DUNKIRK.....	1 to 8 (not observed).	50% Up.
WATERBURY.....		
SPARTA.....		
WILMINGTON.....		
ACME.....	1 to Crew.....	
WILKES-BARRE ICPCO.....	1 to 10.....	75% Up.

1896

FLYBOYS AND ASSISTANTS

	Rate
GREATER BUFFALO..... Juniors.....	No scale indicated.
DUNKIRK.....	
WATERBURY.....	
SPARTA..... Assistants.....	\$45 up to \$75.
WILMINGTON.....	
ACME..... One each folder.....	
WILKES-BARRE ICPCO.....	\$45 to \$75.....

SICK AND ACCIDENT INSURANCE

GREATER BUFFALO.....	Nothing in Contract
DUNKIRK.....	Nothing in Contract
WATERBURY.....	Blue Cross
WILMINGTON.....	
SPARTA.....	
ACME.....	
WILKES-BARRE ICPCO.....	Blue Cross and one-half Blue Shield, Also employees Club

INSURANCE—DEATH

GREATER BUFFALO.....	Nothing in Contract
DUNKIRK.....	Nothing in Contract
WATERBURY.....	Nothing in Contract
SPARTA.....	
WILMINGTON.....	
ACME.....	Nothing in Contract
WILKES-BARRE ICPCO.....	Group Insurance

SICK LEAVE

GREATER BUFFALO.....	None indicated in Contract
DUNKIRK.....	None indicated in Contract
WATERBURY.....	After 5 successive days illness, Dr. certificate may be required
SPARTA.....	None
WILMINGTON.....	
ACME.....	None
WILKES-BARRE ICPCO.....	After 15 years service one week

RETROACTIVE

GREATER BUFFALO.....	Nothing indicated in contract
DUNKIRK.....	Nothing indicated in contract
WATERBURY.....	Yes
SPARTA.....	
WILMINGTON.....	
ACME.....	
WILKES-BARRE ICPCO.....	Yes
GREATER BUFFALO.....	Nothing in Contract
DUNKIRK.....	Nothing in Contract
WATERBURY.....	Nothing in Contract
SPARTA.....	Nothing in Contract
WILMINGTON.....	Nothing in Contract
ACME.....	Nothing in Contract
WILKES-BARRE ICPCO.....	Contract Provision applies to regularly marked up men.

NUMBER OF FLY BOYS

GREATER BUFFALO.....	Contract does not specify, up to management
DUNKIRK.....	Contract does not specify, up to management
WATERBURY.....	One 'A' on each crew
SPARTA.....	One assistant each two journeymen— one flyboy per folder
WILMINGTON.....	One flyboy per folder
ACME.....	One flyboy or apprentice each single width, three
WILKES-BARRE ICPCO.....	Flyboys each double width press

PROVIDING MEN

GREATER BUFFALO.....	Union Provides
DUNKIRK.....	Management may hire anyone when and if Union men are not available.
WATERBURY.....	Same as Dunkirk.
SPARTA.....	
WILMINGTON.....	
ACME.....	Union Provides.
WILKES-BARRE ICPCO.....	Union agrees to provide sufficient men

1698

MANNING NEW PRESSES

GREATER BUFFALO.....	Manning schedule rediscussed only if extra labor involved
DUNKIRK.....	Rediscussed if new type of presses are proposed
WATERBURY.....	No provision
SPARTA.....	
WILMINGTON.....	
ACME.....	
WILKES-BARRE ICPCO.....	Manning of any new press to be rediscussed

PRESS FOREMAN

GREATER BUFFALO.....	All
DUNKIRK.....	Contracts
WATERBURY.....	About
SPARTA.....	The
WILMINGTON.....	Same
ACME.....	
WILKES-BARRE ICPCO.....	

SHIFT FOREMEN

GREATER BUFFALO.....	No provision in Contract
DUNKIRK.....	No provision in Contract
WATERBURY.....	No provision in Contract
SPARTA.....	
WILMINGTON.....	
ACME.....	
WILKES-BARRE ICPCO.....	Provided for in Contract.

1790

SUBSTITUTES

GREATER BUFFALO.....	Contract does not give subs free rights to O.T.
DUNKIRK.....	Contract does not give subs free rights to O.T.
WATERBURY.....	Contract does not give subs free rights to O.T.
SPARTA.....	Contract does not give subs free rights to O.T.
WILMINGTON.....	Contract does not give subs free rights to O.T.
ACME.....	Contract does not give subs free rights to O.T.
WILKES-BARRE ICPCO.....	Disagreeing opinions on the subject.

ARBITRATION

GREATER BUFFALO.....	Yes
DUNKIRK.....	Yes
WATERBURY.....	Yes
SPARTA.....	Yes
WILMINGTON.....	Yes
ACME.....	Yes
WILKES-BARRE ICPCO.....	Yes

September 15, 1954

PRESS SCALES AND CONDITIONS—READYPRINT PLANTS

MANNING OF PRESSES

Buffalo

Single width presses:

Buffalo Color Press: Same as before.

1731 Greater Buffalo Press

4 Color Runs:

4 Color pages or 8 four-color pages collect plus imprint deck.....

1 CH. 2 J.

6 Pages or 12 collect.....

1 3

8 Pages or 16 collect.....

2 3

10 Pages or 20 collect.....

2 5

12 Pages or 24 collect.....

2 6

14 Pages or 28 collect.....

2 7

16 Pages or 32 collect.....

3 6

Black and White Runs:

Minimum Crew.....

1 2

3 Roll Runs.....

1 3

4 Roll Runs.....

1 4

5-6 Roll Runs.....

1 5

Proof Press (Greater Buffalo).....

1 1 1A

Foreman not member of Press Crew when more than 1 press in operation

Dunkirk

Double width Press:

8 Cylinders, 1 folder.....

1 CH. 4 J.

8 Cylinders, 2 folders.....

1 5

12 Cylinders, 1-2 folders.....

1 6

16 Cylinders.....

2 6

20 Cylinders.....

2 7

Foreman not member of crew if more than one press in operation.

1782

SanBernadino

1 Flyman for each folder in operation

1 Additional Journeyman for each color added.

Foreman not member of crew.

Sparta

1 Journeyman to each two plate cylinders

1 Assistant to each 2 journeymen

1 Apprentice

1 Flyman to each folder in operation.

Waterbury

Decker Type Single Width:

4 or 5 Decks, 1 roll.....

1 CH. 1 J. 1

4, 5 or 6 Decks, 2 rolls.....

1 2 1

4, 5 or 6 decks, 3 rolls.....

1 3 1

Plate Ready Bench.....

1 1 1

Foreman not member of crew if more than 1 press in operation.

Wilkes-Barre

Two Plate Wide Presses:					
4-5 Deck.....	1	Ch.	2	J.	1 Fly.
Four Plate Wide Press 2055:					
8 Cylinders.....	2		3		3
1 Additional Flyboy when two folders in operation					
Four Plate Wide Pancoast Press 2091:					
4 Decks.....	2		3		1
1703 2 Decks.....	1		2		1
Four Plate Wide Pancoast Press 2042:					
4 Decks.....	2		3		3
Press 2042 A.....	1		2		1
Pancoast Press 2531.....	2		3		3
1 Additional Journeyman when 2 rolls are used.					
1 Journeyman and 1 Flyman to get Mirror Plates					
ready to be put on the press.					
Foreman not member of operating crew.					

I.C.P. CO. RUNS LOST TO COMPETITORS—September 13, 1954

BUFFALO COLOR

Borger, Tex., Herald.....	10,800
Durango, Colo., News.....	2,000
Gladewater, Tex., Daily Mirror.....	5,500
Lakeland, Fla., Ledger.....	8,900
TOTAL.....	27,200

SOUTHERN COLOR

Albany, Ga., Herald.....	10,500
Burlington, N.C., Times-News.....	30,000
Fayetteville, N.C., Observer.....	40,000
Florence, S.C., Morning News.....	12,250
Gastonia, N.C., Gazette.....	39,500
High Point, N.C., Enterprise.....	41,500

1704 SOUTHERN COLOR (Cont'd)

Johnson City, Tenn., Press Chron.....	40,600
Newport News, Va., Press.....	68,000
Petersburg, Va., Progress Index.....	32,000
Portsmouth, Va., Star.....	24,800
Rocky Mount, N.C., Telegram.....	24,500
Salisbury, N.C., Post.....	33,500
West Palm Beach, Fla., Post Times.....	60,000

TOTAL..... 457,150

ACME

Albuquerque, N.M., Journal.....	30,000
Amarillo, Tex., Times.....	86,000
Clovis, N.M., Chronicle.....	5,000
Durant, Okla., Democrat.....	11,000
Henryetta, Okla., Free Lance.....	3,000
Hot Springs, Ark., Sentinel-Record.....	7,400
Lawton, Okla., Press.....	32,000
Odessa, Tex., Morning Herald.....	5,000
Pocatello, Idaho, State Journal.....	24,000
Portales, N.M., Tribune.....	3,000
Seminole, Okla., Producer.....	5,000
Victoria, Tex., Advocate.....	2,700

TOTAL..... 214,100

1705 **EASTERN COLOR**

Bangor, Me., News.....	155,000
Fairmont, W. Va., Times.....	17,000
Jackson, Miss., News.....	82,000
Lowell, Mass., Sunday Telegram.....	15,000
New Brunswick, N.J., Times.....	25,000
Parkersburg, W. Va., News.....	43,000
Wheeling, W. Va., News Register.....	44,500
Jackson, Miss., Clarion Ledger.....	106,500
TOTAL	488,000

GREATER BUFFALO

Columbus, Ohio, Star.....	180,000
Detroit, Mich., Free Press.....	662,000
Fargo, N.D., Forum.....	103,000
London, Ont., Canada, Free Press.....	124,000
Miami, Fla., News.....	448,000
Nashville, Tenn., Tennessean.....	381,000
Roswell, N.M., Sunday Record.....	6,800
Sioux Falls, S.D., Argis Leader.....	106,500
Syracuse, N. Y. Post Standard.....	209,000
Erie, Pa., Dispatch Herald.....	192,000
Erie, Pa., Sunday Times.....	92,000
Toledo, Ohio, Blade.....	705,600
Youngstown, O., Vindicator.....	429,000
TOTAL	3,638,900

FORT WORTH

Dallas, Tex., Times Herald.....	612,000
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TOTAL..... **612,000**

OWN

Oakland, Calif., Post Enquirer.....	200,000
Omaha, Nebraska, World Herald.....	1,028,000
Jamaica, L.I., Press.....	500,000
Newark, N.J., Star Ledger.....	700,000
Harrisburg, Pa., Patriot News Novel.....	250,000
Harrisburg, Pa., Patriot News Mag.....	250,000

TOTAL..... **2,928,000**

STAR

Wilmington, Del., Sunday Star.....	48,000
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TOTAL..... **48,000**

WORLD COLOR

Decatur, Ill., Herald Review.....	135,000
East St. Louis, Ill., Journal.....	75,000
Urbana, Ill., Courier.....	59,250

TOTAL..... **269,250**

GRAND TOTAL..... **8,682,600**

Mr. BERNSTEIN: The Government offers in evidence Deposition Page 19—

The COURT: Which deposition is that?

1707 Mr. BERNSTEIN: Frank J. Nicht, dated March 20 1961, lines 16—excuse me—line 11.

Mr. RAICHLE: To where?

Mr. BERNSTEIN: I'm going to 18, page 19:

"Q. Does King Features Syndicate employ salesmen?

"A. Yes, sir.

"Q. Do these salesmen travel, to your knowledge, throughout the country?

"A. Yes, sir.

"Q. About how many salesmen does King Features Syndicate employ?

"A. Twelve to fourteen."

Mr. BERNSTEIN: On page 35, line 21:

"Q. I believe you listed the competitors of King Features Syndicate from 1950 to 1954. Directing your attention now, during that period, to Northeastern or New England States, do you know whether in the years 1950 to 1954 King Features Syndicate sold newspaper publishers, and I am referring now only to color comic supplements, located in the New England area?

"A. I think so.

"Q. Referring now only to the New England area 1708 during those years, who were your competitors?

"A. I have already stated that.

"Q. You told me all the competitors of King Features Syndicate and I want to know only in the New England area. That is, if you know?

"A. The chief one would be Eastern, Eastern at Waterbury.

"Q. Anyone else?

"A. Greater Buffalo.

"Q. Anyone else that you can think of?

"A. I can't think of any.

"Q. In regard to, say, Acme Colorprint Corporation, where were they located?

"A. San Bernardino, California.

Q. Did you consider at that time Acme to be the competitor of King in the New England area?

"A. No, sir."

Mr. BERNSTEIN: Page 37, line 3:

"Q. Southeastern, referring to the southeastern area of the United States—and I am referring now particularly to the States of Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North

1709 Carolina, do you know whether during the years 1950 to 1954 King Features Syndicate sold color comic supplements to newspapers located there?

"A. Yes, sir.

"Q. Referring to that area and during the years 1950 to 1954, who were the competitors of King?

"A. Greater Buffalo, NEA, Southeastern Color Printing Company, I believe they print at Newport News, Virginia.

"Q. What was that name again, sir?

"A. Southeastern, I think. I think that is the name.

"Q. Is that Southeastern or Southern Color?

"A. Southern Color, I think that is it, yes. And the Star Color Company of Wilmington.

"Q. In that area, then, do you know whether Star was considered a big factor, or it had a large volume in regard to the sales of color comic supplements?

"A. It wasn't regarded as a big factor then.

"Q. Are there any other competitors you can think of who sold and competed with King in that area?

"A. Perhaps World Color of St. Louis. I'm not sure.

"Q. You don't know?

"A. I don't know.

1710 "Q. Referring to the western part of the United States, and that will be west of the Rockies, did King Features Syndicate sell color comic supplements in that area?

"A. Yes, sir.

"Q. Who were the competitors of King in that area in the years 1950 to 1954?

"A. That would be Acme at San Bernardino on a very limited scale, Greater Buffalo, NEA.

"Q. When you say Acme on a limited scale, do you mean by that that they were a small or minor competitor of King Features?

"A. I think that is in reverse. We were small in comparison with them.

"Q. In other words, Acme was the leading competitor; is that correct?

"A. We couldn't compete with them.

"Q. Why couldn't you compete then with Acme?

"A. Because of our location. Our plants were too far East.

"Q. By 'location,' do you mean the transportation costs or any other costs involved?

"A. Yes, sir."

Mr. BERNSTEIN: The Government at this time moves
1711 that all of the evidence admitted against NEA only,
with the right reserved to be admitted against Greater
Buffalo as a declaration of a co-conspirator be received as
against Greater Buffalo under the co-conspirator rule.

Mr. RAICHLE: To that we object; Your Honor reserved.

The COURT: I shall reserve decision on that.

Mr. BERNSTEIN: The Government moves at this time, with
respect to those exhibits which it offered as against NEA sub-
ject to later connection, that they now be received as against
the Defendant NEA under the co-conspirator rule.

Mr. STEVENS: NEA objects.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government requests permission to
insert in the record a composite stipulation so that we can have
one document rather than this series of stipulations.

Mr. RAICHLE: I think it would be desirable.

Mr. STEVENS: We urge greatly it be done.

Mr. BERNSTEIN: The Government will do that.

1712 The Government also keeps the record open for the
purpose of inserting the testimony concerning what was
offered as P-69 and then withdrawn, unless some stipulated
testimony can be received.

The COURT: All right. I would like to know about that. That
is going to change things around a bit if you are going to take
a considerable amount of live testimony.

Mr. RAICHLE: We will try to work that out.

The COURT: All right.

Mr. BERNSTEIN: I am sure we can.

The COURT: All right.

Mr. BERNSTEIN: The Government now moves to amend the
complaint by deleting the following language on page 10, para-
graph 4: "The defendant Greater Buffalo, since about June
1955, has monopolized—". Delete from page 13, paragraph
30(d): "The defendant Greater Buffalo has obtained a mo-
nopoly of the printing of color comic supplements in
1713 the United States."

The COURT: That is just in furtherance of the an-
nounced intention some time ago?

Mr. BERNSTEIN: That is correct.

The COURT: Granted.

Mr. BERNSTEIN: This is the formal motion.

The COURT: That is granted.

Mr. BERNSTEIN: Page 13, paragraph 1: "And that the defendant Greater Buffalo has monopolized——".

The COURT: Granted.

Mr. BERNSTEIN: Page 14, paragraph 5: "And the monopolization of the aforesaid interstate trade——".

The COURT: Granted.

Mr. BERNSTEIN: Except for the reservations I have made, Your Honor, the Government rests.

The COURT: Now, we have laid out a schedule of events. You, Mr. Bernstein, are going to send me a letter, and copies to each party of those events, and if there is any misunderstanding let me hear promptly. I think we ironed it out 1714 this morning. All right, gentlemen.

(Thereupon, the court was adjourned at 3:55 p.m.)

[Caption Omitted In Printing]

Proceedings held before the Hon. JOHN O. HENDERSON, United States District Court Judge, Western District of New York, on January 19, 1966, at Buffalo, New York.

APPEARANCES: *Lewis Bernstein, Esq.*, and *Elliott P. Feldman, Esq.*, Antitrust Division, Department of Justice, appearing for Plaintiff.

Frank G. Raichle, Esq., 10 Lafayette Square, Buffalo, New York, appearing for Greater Buffalo Press.

Richard F. Stevens, Esq., and *Bourne P. Dempsey, Esq.*, 1956 Union Commerce Bldg., Cleveland, Ohio, appearing for NEA.

1716 PROCEEDINGS OF JANUARY 19, 1966, COMMENCING AT 2:00 PM

The COURT: Gentlemen.

Mr. BERNSTEIN: Good afternoon, Your Honor. May it please the Court: The principal issue before the Court today is whether the plaintiff has proven prima facie that in 1954 Greater Buffalo and King were engaged in a combination in restraint of trade through agreements not to compete with each other and that when Greater Buffalo acquired International as a consequence of this combination then it became clear that the purpose of the combination was to permit Greater Buffalo to monopolize the printing of color comic supplements

for newspapers which did not print their own and with

1717 King to monopolize the sale of the printed supplements.

This was later joined by NEA in the fall of 1955. If the plaintiff has proven what I have just said by the testimony and the documents that are now in evidence, then the documents under advisement—or virtually all of them, or most of them with one or two exceptions—most of the documents under advisement should now be received in evidence.

Now, to demonstrate that the plaintiff has proven this, we will first describe the nature of the competition that had existed between Greater Buffalo, King and NEA at the time that the agreements, which constituted the combination in restraint of trade, were entered into. I have some visual aids, if the Court will excuse me, I believe this might be helpful.

In Chart 1 here, we attempt to show the nature of the competition in 1954. The principal product involved was colored comic supplements and therefore we start out with the
1718 newspapers. Seventy percent of all of the printed supplements contained in newspapers, comic supplements, that is, were not printed by the newspapers themselves but were printed by color comic printers. Thirty percent of the supplements were printed by newspapers themselves and therefore nobody sold them to them. Those that were not printed themselves were sold by King and Greater Buffalo, who were the two principal competitors for the sale of these supplements, and they were also sold by NEA and they were also sold by other color printers. There was a difference in the business between King and Greater Buffalo and NEA. King and NEA, their business was pretty much the same to the extent that both of them sold features to the newspapers, the copyrighted rights to the color comics; whereas Greater Buffalo only
1719 sold the printing service. The important thing about that, your Honor, is that Greater Buffalo's business depended on the assumption that the newspaper had already received a copyright, the newspaper was already using color comic supplements to which it had been licensed. Greater Buffalo's business was to induce them, to say "instead of having somebody else print your features, or instead of printing it yourself, we will do the printing for you; you get the license, you have the license, we will do the printing for you". Not so King and NEA. King and NEA, although they did the same thing, they too said to the newspapers, "we will do the printing for you not

only of the features that we license, even other features that you have, we will do that printing too." But, in addition, they sold the features along with the printing or they sold 1720 the printed supplements together.

Now, a word about what is sometimes called ready-print. King started in this business originally through Hearst when it found that it printed a package of four or five or six comic features in one supplement for its own newspapers, and then it would go around to smaller newspapers and say, "Look, we have got these printed for our own, all we have to do is change the masthead and you can have the same package" and hence it became known as readyprint. Greater Buffalo's business was a little different. Greater Buffalo would go around and say, "What features are you now having printed; we will do the printing for you." And so there came a time that King and NEA had to also get into that business of selling not only the readyprint in that fashion but also to sell the printing. That was the nature of the competition in and around January

1954, when Nicht testified that he made a deal with 1721 Koessler of Greater Buffalo and that deal was, that for two newspapers, which had previously printed their own, the Gannett newspapers with headquarters in Rochester, the newspapers being the Binghamton newspaper and the Utica newspaper, and he made a deal with Koessler that Koessler would take one of them, he would take the other, they would not compete for that business. Now, in the eyes of the law that becomes an allocation of customers; that is an agreement between two competing sellers not to compete for the business—

The COURT: Well, just a minute, you said the newspapers that printed their own, they would divide those newspapers up.

Mr. BERNSTEIN: May I say it again? These Gannett newspapers had two newspapers, one in Utica, New York and one in Binghamton, and they had been printing their own, and King wanted the business of printing both of them because 1722 Gannett was not going to print their own any longer, they were going to give it to somebody else. Who were they going to give it to; either Greater Buffalo or they could give it to King or presumably they could give it to some other color printer or NEA. We do know that the testimony of Nicht was that he and Greater Buffalo were in competition for that business and they made an arrangement that Koessler was to

take one, Nicht the other. Nicht wanted both but that was the way they made the arrangement, that is, the agreement to allocate half of that business, and it is a violation of Section 1 of the Sherman Act, and it is illegal. Nicht testified that a little while later there was another newspaper in Waterloo, Iowa, and he and Koessler were in competition for that business, and so it was agreed, he said, with Koessler, that he would not solicit that business, that Koessler would get that business in 1723 Waterloo. It isn't clear from the record now in evidence, although some of the documents that are under advisement clarify it. As far as the record stands now it is not clear whether the Waterloo, Iowa newspaper was a newspaper that printed its own or was a newspaper that had previously been serviced by someone else. The Government contends that it was previously serviced by someone else; Waterloo, Iowa.

In any event, the contract had expired, they were competing for that business, King and Greater Buffalo. Nicht testified that they agreed Greater Buffalo would take the account and King would receive a kick-back of \$50 a week, and the way they were to receive that kick-back was that King was going to bill Greater Buffalo for "special mat service" —

The COURT: Now, right there, how were they going to keep someone else out?

Mr. BERNSTEIN: It was not keeping someone else 1724 out. Right there, the Government contends they eliminated competition between each other for that account.

The COURT: Somebody else has done it before apparently?

Mr. BERNSTEIN: The Government contends it was either King or Greater Buffalo that did it before, but my last statement is not in the record as of this point.

Now, Nicht's testimony further is that some time between January 1954 and June—some time in 1954—the Government contends that it would be around April 1954—there is no evidence in the record on that date yet, that is in the documents under advisement—but it is clear in the record it was in 1954 that Nicht testified that he made another arrangement with Koessler and that was to leave each other pretty much alone, that they would not compete for accounts of each other's customers.

Now, a word about the nature of their business. When a syndicate or a color printer had the business of news- 1725 papers, it was generally done by a contract, a written

contract, which generally provided for a period of time, a year or whatever it was, with the right to expire or renew or something like that; so that they were not on a day-to-day basis in competition for a particular newspaper, on a daily basis; they were only in competition for that newspaper when its contract was about to expire when he would then solicit business from other color printers or other syndicates or other syndicates or color printers would solicit his business. So in view of that, Nicht's testimony that he and Koessler agreed to leave each other pretty much alone means that if they already had an account, they would not solicit the other's account. That too is a violation of Section 1, a conspiracy in restraint of trade.

There is further evidence of this, not only Nicht's 1726 testimony; we have Koessler's written letters to Nicht in which he says that 'we have reached an understanding which I will agree to put into a formal contract'; but an examination of the document, an examination of the several documents, shows that they had several discussions and the kind of language they were shaping was precise language that could go into a formal contract. They had reached agreement on the substance, they were now trying to develop the language that would express the substance of what they had agreed on. One of the things that Koessler said to Nicht in the letters was that 'We agree that you will keep your accounts, we will keep our accounts.' This is an agreement between competing sellers not to compete for the existing business of each other and is a Section 1 violation.

Now, in that posture of things, what was happening? King had a contract with International, that had been in 1727 effect for a long time, that International was to print only for King, it was not to print for any other syndicate or anyone else, it was only to print for King; and King had virtually all of its supplements printed with International. International was not pleased with the amount of revenues it was receiving, it was not pleased with the profits of its business. It had been owned by a family that were absentees, were not there, and they were entirely at the mercy of King who—if King didn't give them the business or didn't give them the price, they had no business unless they sought it elsewhere. They had a contract with King that was terminable on six months' notice by either party. They were seeking to sell out, they were seek-

ing to sell their contract. Now, it was in this posture that King had had this arrangement with Greater Buffalo that they were not going to compete for each other's customers, and International was thinking of selling out, when Nicht
1728 testifies he made another arrangement with Koessler. Koessler proposed to open up a printing plant at Lufkin, Texas, and his motive in doing that was to provide his customers in the southwest and southern area with cheaper transportation rates by printing in that area. The Government does not criticize that. At the same time, King, which had most of the business in the south, also wanted to accomplish the same thing, and not let Greater Buffalo get ahead of it in securing that business, and it was persuading and inducing, and it had reached the point where International had voted, by its Board of Directors, to proceed with the establishment of a plant in Sylacauga, Alabama.

The COURT: Say that again.

Mr. BERNSTEIN: King and Greater Buffalo were——

The COURT: I am talking about the Sylacauga plant,
1729 what did you say about that?

Mr. BERNSTEIN: International was contemplating—it was more than contemplation—the Board of Directors had voted it, they had entered into a newsprint contract to do that and they proposed to open up a plant in Sylacauga, Alabama for the purpose of providing cheaper transportation rates to the customers in the south and southwest area. Those customers were then owned by King. King at that time was in competition with Greater Buffalo for customers in that area and Greater Buffalo, to service the customers in that area, was making plans to open up a plant in Lufkin, Texas. The plant in Lufkin, Texas—or stated another way——

The COURT: I take it you mean International, which was not happy, encouraged by King, was thinking about Sylacauga?

Mr. BERNSTEIN: It was doing more than that; it had made a contract with a newsprint company to furnish the
1730 newsprint to the plant; the Board of Directors had voted for them to go; all of this was done through King's urging and King's assistance and at the same time.

The COURT: Where is the proof in this case of that?

Mr. BERNSTEIN: Yes, your Honor. The proof in the case of that Exhibit 54——

Mr. RAICHLE: You don't claim that International ever made a contract for the paper? You look at the record; King made a contract for paper.

Mr. BERNSTEIN: I stand corrected. King made a contract to have newsprint delivered to a plant in Sylacauga, Alabama, and Exhibit 54 in evidence is the Director's Minutes of International that shows that it had authorized the proceeding.

Mr. RAICHLE: It wasn't for Sylacauga, it was some place in the south.

Mr. BERNSTEIN: It was for the Sylacauga plant.

Mr. RAICHLE: You are mistaken again.

The COURT: I wanted to know the basis upon which you made that statement. All right. King and International 1731 have something they want to work out, according to you, advantageous to each other.

Mr. BERNSTEIN: Are you saying King and International?

The COURT: That is right.

Mr. BERNSTEIN: Yes. King and International want to open a plant in Sylacauga, the plant in Sylacauga, Alabama is going to be in competition with the Greater Buffalo plant in Lufkin.

The COURT: All right, go ahead.

Mr. BERNSTEIN: It is at that time in the posture of things, in the posture of Nicht's agreement with Koessler to leave each other's customers alone, that Nicht testified that he had also agreed with Koessler that when the Lufkin plant would open that Nicht would transfer runs from International's plant into Lufkin with the understanding that he would receive a kick-
back of fifty cents for each supplement printed at that
1732 plant, whether the business was gotten by King or whether the business had already been in the plant by Greater Buffalo. The Government contends this is another part of the same conspiracy to allocate customers and eliminate competition.

While all of these things were going on, International was unhappy about its revenue, it was looking to sell, and several propositions were in the wind. Those are contained in the documents under advisement, that is, not in evidence. The fact of the matters in evidence is that Nicht and Koessler reached an understanding. It had not reached the form of a formal contract in all aspects, in many aspects it did. They reached an understanding in sufficient substance that they were talking about the terms of the contract that would be entered into; and what

was the understanding—this is before the acquisition of International, your Honor,—the understanding was that Greater Buffalo would buy International, International's stock.

The COURT: Now, tell me why. Do you know a motive for that?

Mr. BERNSTEIN: Yes, that is the next sentence. The motive is that Greater Buffalo agreed that it would not print for any other syndicate, it would print only for King, and King would have its printing done nowhere else other than Greater Buffalo or International, which would be owned by Greater Buffalo.

The COURT: Can you spell that out?

Mr. BERNSTEIN: Yes, your Honor, I will spell it out. I present to your Honor Exhibits 15 and 16 in evidence. On Exhibit 16, your Honor, on page 4, paragraph 9, here is what Mr. J. W. Koessler, President of Greater Buffalo Press, agrees with Nicht: "For the period of this contract, the Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such accounts as it presently holds"—that is, Greater Buffalo's business—"and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate." That means it will print only for King Features, only for the accounts that it is authorized to print under this contract then and for no one else—

Mr. RAICHL: That contract was never signed.

Mr. BERNSTEIN: In the next paragraph King Features undertakes to process all of its contracts for printing only through Greater Buffalo or International. On the first page of the document: "The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press and King Features Syndicate presently have." In other words, the intent of the parties was clear. Now, we also know by the evidence in the—strike that out. The testimony in this case is that King and Greater Buffalo were the largest sellers of color comic supplements. It is the Government's contention from a document under advisement, but which is in admission against Greater Buffalo, I think the dispute of the document under advisement is whether it should go in against NEA, and that is the share of the market. The share of the market is that by the acquisition there was sixty-three percent

of all of the printing done by both Greater Buffalo and International combined. So that with King's intent that Greater Buffalo do the printing only for itself and for King, and the two of them would share in the selling—and the contract specifies which newspapers will be sold by which—then it is clear that the intent of both parties is that Greater Buffalo is to dominate the printing of the color comic supplements for those newspapers which do not print their own, and the two of them are going to share in that arrangement, and 1736 that constitutes what started out as an agreement to eliminate competition for two accounts, and then another account, and then for all accounts, and then eliminate competition in Lufkin, Texas, and now constitutes an agreement to eliminate competition for all accounts, with Greater Buffalo to be the only printer and no syndicate to have the opportunity to be printed by Greater Buffalo, and that, the Government contends, constitutes a violation of Section 2 of the Sherman Act or a conspiracy to monopolize in the form that I have just alleged.

The COURT: Now, you said originally that King and International had intended this Sylacauga plant, and then it winds up that Greater Buffalo—

Mr. BERNSTEIN: That is correct.

The COURT: Tell me about that.

Mr. BERNSTEIN: Yes. That arises out of the fact that by the acquisition of International, Greater Buffalo is now 1737 in a position to open up the Sylacauga plant and is now in a position to open up the Lufkin plant, and the competition between Greater Buffalo and King in the south and southwest is eliminated because Greater Buffalo is to do the printing—

The COURT: You said originally that King provoked International—

Mr. BERNSTEIN: That is right.

The COURT: —to put the printing plant down there.

Mr. BERNSTEIN: That is right.

The COURT: What transpired there? There is a fuzziness there to me.

Mr. BERNSTEIN: May I try and clarify it this way. Because we are looking at conduct which started in January 1954 and right now we are—

The COURT: Were these people crowding each other so hard, King and Greater Buffalo?

Mr. BERNSTEIN: King and Greater Buffalo were crowding each other hard up to January 1, 1954.

The COURT: King devised this plant down south, using International, you say, to open the Sylacauga plant. Now, that sounds like a good idea.

Mr. BERNSTEIN: That is right.

The COURT: What happened? I don't understand what happened to change that. Is there an easier way suggested?

Mr. BERNSTEIN: If the documents under advisement are received in evidence, we will see what happened, this shows what Nicht had in mind. I am trying to rely on the evidence that is in the record right now, and the Government contends that what happened, your Honor, is that Nicht and Koessler made a deal that as long as Nicht was going to be assured that it was going to be the exclusive seller for Greater Buffalo, it was not worried about Greater Buffalo buying International and opening the plant in Sylacauga; it didn't need to, it still wanted International to open the plant in Sylacauga, and it did, but it did under Greater Buffalo's auspices because Greater Buffalo acquired the stock in International.

1739 The COURT: Yes, I understand. In other words, you state that pursuant to all this Greater Buffalo bought International, part and parcel of the whole——

Mr. BERNSTEIN: It was all part and parcel of one arrangement.

The COURT: That family in Scranton just sold out, right?

Mr. BERNSTEIN: Govine?

The COURT: This tired family of printers known as International sold out?

Mr. BERNSTEIN: Sold out to Greater Buffalo, yes. Now, it is the Government's contention that King did two things that permitted or facilitated or inspired or induced Greater Buffalo to acquire International. The Government contends that King, relying on International as its printer, unless it had a printer to go to or unless it printed its own, could not be in the business of selling supplements to newspapers. It had to 1740 have a printer and it was relying entirely on International for its printing. The Government contends that for King to permit its chief competitor to buy International it had to have some assurance, it had to have some arrangement or else it would not have permitted it. What was the arrangement? The arrangement was that it entered into a ten-year

contract with International so that it was sure that for ten years Greater Buffalo would continue to print for it and it wouldn't be entirely at its mercy. That was the first thing it did. Up until that point it had a contract that was terminable on six months' notice. The Government contends that because it could terminate that contract on six months' notice, that by entering into a ten-year contract with International, obligating itself for ten years, it thereby facilitated and aided the sale of International to Greater Buffalo. That is the overt act 1741 that it did, it entered into a ten-year contract with an escalation clause paying International more than it previously paid this tired family that caused them to run down, it paid it more because with this tired family it had no arrangement that nobody else could get printing done or there wouldn't be any competition in the business; but with Greater Buffalo it had the arrangement, it had an agreement, it had an agreement that there wouldn't be any other printing done for any other syndicate, that there wouldn't be any competition between Greater Buffalo and King. Under those circumstances it offered to pay International more money than it had been paying the old, tired family. Furthermore, it provided for escalation clauses in the contract so that there would be periodic increases in price over the ten-year period of time.

This chart shows—represents International's business. What did International consist of, what was the stock worth? 1742 It was represented by the physical assets, and we have no evidence of what they were worth, but the bulk of it was represented by the profit on \$8,483,000 worth of business that King was giving International. If King cancelled its contract under that six months' notice, and Greater Buffalo believed that that contract was going to expire in July of 1955, if King didn't renew that contract, Greater Buffalo was buying stock in a company that had no business, no accounts, zero business, just physical assets—

The COURT: Let me ask you this. King is dealing—and I wish I hadn't used the term, I don't want to adopt it as an ism in this case, the tired family—they were dealing with this organization in Scranton—

Mr. BERNSTEIN: In Wilkes Barre.

The COURT: International?

Mr. BERNSTEIN: Wilkes Barre.

1743 The COURT: Well, anyway, you have a man named Koessler who apparently makes an excellent mouse trap. How about this for an explanation of all this? That after all, King is not in the printing business, it wants its printing done, there is an opportunity in the wind to get an excellent printer named Koessler, and their former—and I regret this—tired printer to amalgamate and turn out their product and sell it somewhere. Tell me about that. I mean, maybe nobody is interested, but I am. I am talking about this; there's a place called Wilkes Barre in which the ownership is worn out, and King has been dealing with them for their business; and Koessler is coming up because he does well. Now, King, I take it, is not interested at all in printing—

Mr. BERNSTEIN: Not completely, your Honor, the Government—

The COURT: Assume that for the moment; they are middlemen, selling a product, and suddenly there comes competition from Buffalo in the form of Greater Buffalo Press. Now, Greater Buffalo Press and Wilkes Barre join up in an efficient operation to turn out the requirements of King. I want to hear the other side of the coin.

1744 Mr. BERNSTEIN: The other side of the coin is this, your Honor. This group of other color printers are competing for the business of newspapers or they can get syndicates, to compete for the business of syndicates, that is—

The COURT: These other color printers that I have seen in here are remote, far away, and the only recall I have is a gentleman from the south, kind of a big man, and this fellow was somebody who left International—

Mr. BERNSTEIN: Hornady.

Mr. RAICHLE: Left King.

The COURT: You talk about the southern printing plant, their stature is kind of nebulous with me.

1745 Mr. BERNSTEIN: I was not talking about the Southern Color Plant, there is a plant, Eastern, and one in Connecticut, there are other color printers.

The COURT: Their stature to do the job is—

Mr. BERNSTEIN: The point is this, your Honor, that we are talking about King who started in this business of selling color supplements. King was the one who started this business, King

was the one selling to the newspapers, and King suddenly found competition with Greater Buffalo, and this is lawful and natural and to be encouraged. Now—

The COURT: Wait a minute, put it right in focus. You claim your case really is King being confounded by International—or by Greater Buffalo Press, head to head, keenly competitive, made a deal. You are not really saying that these little fellows in the wilderness had much to do with it; you say because King and Greater Buffalo Press washed each other out, so to speak, as competitive factors, caused a violation?

1746 Mr. BERNSTEIN: That is exactly the point.

The COURT: These little fellows down here, yapping at the heels, don't amount to—

Mr. BERNSTEIN: I'm not talking about them. I am talking about the elimination of competition between King and Greater Buffalo, and there is nothing unlawful for King, while it has this contract with International or as its contract is about to expire, to go to Greater Buffalo Press and say, "Look, my contract with International is expiring, what will you do to print for me instead of International", nothing unlawful in that. The illegality comes in when he said to Greater Buffalo, "I'll give you my printing business only if you don't print for anybody else, only if you don't compete with me." It is illegal for Greater Buffalo to say to King, "I'll be your printer if you agree not to have your printing done anywhere else, just have all your printing done with me," that is what makes it illegal.

1747 the dual role of customer-competitor, that causes the illegality here. On the face, as your Honor said, on the surface, there is nothing illegal about the owners of International, for whatever reasons, desiring to sell out. There is nothing illegal for a color printer to buy it. Section 7 of the Clayton Act prohibited Greater Buffalo from buying it. Somebody else could have bought it, but not Greater Buffalo. Now supposing Greater Buffalo didn't buy it, couldn't buy it because of the prohibition of the law, Section 7 of the Clayton Act; what would King have to do? King would have to say "If the Govines are going to get out, either I have to sweeten the pot or I have to get out of the business or I'm not going to compete with Greater Buffalo." There is no gun at the head of King that they must stay in business, but they can't have their cake and eat it, they can't have it both ways. They

1718 can't say that "I'm going to stay in business and derive profit out of the printing end of the business, and I am

going to get my competitor to be my printer, and I am going to get him to be my printer by preventing him from doing business for any one of my other competitors, I'm going to be the only one to get advantage of this efficient operation and his better mousetrap", that is where the illegality comes in, your Honor. So the illegality comes in when King helps this along by making a contract with International for a ten year period of time, sweetens the pot, agrees to pay more over the years, but only after he has an agreement from Koessler that Koessler won't print for anyone else. That is where the illegality comes in.

Now, we now turn to NEA's participation in the transaction.

Mr. RAICHLER: I'm sorry, I couldn't hear that; participation in what?

1748 Mr. BERNSTEIN: In the—I said transaction, I meant conspiracy, excuse me.

What was NEA's picture while all this was going on? NEA was competing with King and Greater Buffalo for the newspapers that didn't print their own, and they had their printing done by their own subsidiary, Buffalo Color Press—

Mr. STEVENS: Would you mind saying they had some of its printing done? Your brief says that and that is the fact.

Mr. BERNSTEIN: NEA had printing done by Buffalo Color Press, it also had printing done by other color printers. NEA was a subsidiary of Scripps, the Scripps Newspapers, and Scripps, like King, a division of Hearst, Scripps and Hearst were in the business primarily of publishing newspapers and printing newspapers; Hearst used a division, King, to sell the features and the printing, whereas Scripps used a subsidiary,

1750 NEA, and the subsidiary, in turn, had another subsidiary, Buffalo Color Press, that printed for NEA; NEA also had printing done by other color printers; NEA had some printing done by Greater Buffalo. But NEA was a competitor of Greater Buffalo and was a competitor of King. NEA was in this dual competitive customer relationship with Greater Buffalo for some newspapers. Now, NEA took—

The COURT: Excuse me, what newspapers?

Mr. BERNSTEIN: What newspapers?

The COURT: Where were the newspapers?

Mr. BERNSTEIN: NEA's newspapers were located throughout, all over, that they were in competition for. They had some

in the south, they had some in all locations. The larger newspapers, the larger ones, some it had printed by Greater Buffalo.

The COURT: You said NEA, an interstate organization of some magnitude, had some of its printing done by—I think you called it Buffalo Color Press?

1751 Mr. BERNSTEIN: Yes.

The COURT: I never heard of that. I heard of Greater Buffalo Press. What was that?

Mr. BERNSTEIN: Buffalo Color Press was a printing plant, it printed—the record doesn't show whether Buffalo Color Press printed for newspapers other than those owned or affiliated with—

The COURT: How big a thing was that? I never heard of Buffalo Color Press.

Mr. BERNSTEIN: It accounted for approximately three percent—it printed approximately three percent of all the supplements that were purchased by newspapers that didn't print its own.

Mr. RAICHLE: It sold for \$25,000.

The COURT: That had nothing to do with Koessler? He bought that eventually?

Mr. BERNSTEIN: Yes, he bought the assets of it.

The COURT: I say, that had nothing to do with Koessler at the time it was producing for NEA?

Mr. BERNSTEIN: It did not. The name is confusing, they both have the name Buffalo in it. Greater Buffalo is
1752 Koessler's operation, Buffalo Color Press is NEA's operation.

The COURT: You see, Mr. Stevens said, and I think properly, it did part of the printing. I don't know how big Buffalo Color Press was at one time, I have the notion it was fractional in supplying the needs of NEA.

Mr. BERNSTEIN: Correct, that is correct, because NEA was having it done by other printers, not Greater Buffalo. It had a minimum amount of printing done by Greater Buffalo. It was using these others; World Color in St. Louis, Acme on the west coast; it was using those other color printers. NEA was also interested in the business in the—

The COURT: Don't put that up yet, I want to talk more about the other chart. You say NEA had lots of printing done by other color print places around the country. I don't understand why

Buffalo Color Press entered into it if it's a fractional
1753 amount of NEA's requirements.

Mr. BERNSTEIN: I will try to explain. Because the point is, the main point of how Buffalo Color Press enters into it is that NEA makes an arrangement with Greater Buffalo and the sale of the assets of Buffalo Color Press happens to be involved. We are not interested in that. It is the terms of the arrangement that we are interested in, that is what I am coming to.

NEA was also interested in southern business, and it believed that Greater Buffalo was going to open up a plant in Lufkin, it believed this in 1954 at about the time that Nicht testified that he had this arrangement. The Government does not contend that NEA knew all of the conversations that Nicht had with Koessler or the substance or the terms of them. The Government contends that NEA did know, did believe—did believe

Greater Buffalo was going to open up a plant in Lufkin, 1754 Texas. It also believed that Greater Buffalo needed an assured volume in that plant before it could open it up, it had to have a guarantee of a certain number of runs, it believed otherwise it wouldn't be able to open that plant. It also believed that King was going to open up the plant in Sylacauga, it believed that. It proposed to compete for the business in that area through World Color, which was another color printer in St. Louis, Missouri. The documents in evidence against NEA shows that it believed that it could successfully compete for this business through NEA.

Now, along about March of 1954 NEA gets word from one of its associates in the south who reports that he spoke to Koessler, it gets word that King is going to transfer runs to Lufkin. Now, at that point of time this must be quite unnatural. What would happen if we got word today that Macy's and Gimbels were seeking to open competing department stores in a shopping center and that Macy's controlled all the sites in the shopping center, and then Macy's were going to permit Gimbel to open there. Something seems suspicious, they don't know what, or else the rumor isn't true, or else it isn't going to happen. So that it heard that—let's for the moment say it hadn't formed any definite conclusions—it still proposes to compete through World Color. Then it learns that Greater Buffalo acquired International and now it knows that Greater Buffalo has its own printing plant in Lufkin, it knows it now has International and the opportunity to print down at Sylacauga. Now, what is its state of mind, what is its knowledge at

this point, what does it believe then? This is a highly unusual situation. It knew that King had most of the business in the south, it knew that King and Greater Buffalo were the biggest competitors, it knew that Greater Buffalo's acquisition of International eliminated that competition between Greater Buffalo and King because normal business prudence would have said they would have said—they would have concluded, as normal common sense, that King, who for all of these years had all of its printing done by International and was competing with Greater Buffalo, would never permit Greater Buffalo to make that acquisition unless it had some arrangement. Now, let's say at that point it is just suspicion, it is not confirmed yet. Now, what does it do? Now we come to Buffalo Color Press and that answers your question, what does it do. It sends a letter of congratulations to Koessler, it congratulates him on now being the largest color printer; it knows now that it dominates the printing of the industry because it has the combined business of King and Greater Buffalo, and so what does it do then; it liquidates its plant and it transfers whatever business it has—it was of some volume—it transfers all of that business to Greater Buffalo and again the terms of that transfer are very important. NEA—

The COURT: You said transfer its assets—

Mr. BERNSTEIN: Sold them, sold the physical plant. As you have said before, your Honor, it is insignificant, we make no—we have no concern about the physical assets, the \$25,000 figure or whatever the figure was that counsel mentioned before. From the Government's standpoint it is insignificant, we are not interested in that.

The COURT: But you enmesh NEA in a conspiracy because of that?

Mr. BERNSTEIN: Because of what I am going to tell you.

The COURT: Gentlemen, I am going to have to recess. I had planned—I find this very interesting, but I didn't realize it would go on so long—I scheduled a series of pretrials in seamen's cases at three. I must, in fairness to the lawyers, tell them that this is going to have to go on, they will have to do the best they can. Excuse me for about five minutes.

(Thereupon the court was in recess at 3:00 p.m.)

(Proceedings resumed pursuant to recess, commencing at 3:05 p.m.)

Mr. BERNSTEIN: Just before the recess, Your Honor, we were talking about NEA's liquidation of its plant, and it made a contract with Greater Buffalo, two contracts, but the effect or the substance of that contract was that all of the newspapers that were then being—strike that out—that all of the supplements then being sold to newspapers by NEA, which had been printed at Buffalo Color Press, were in effect transferred to Greater Buffalo, and those newspapers are identified on P-27. At the back the names of the newspapers are listed, and on appendix—

The COURT: Tell me how big is NEA? I'm not familiar with that. These are all small little cities, I take it, how big is it otherwise? I mean—

Mr. STEVENS: You don't claim that is in evidence?

Mr. BERNSTEIN: The record doesn't have any figures on the sales of NEA.

The COURT: I am trying to get NEA an image. ADA Evening News or Artisia, New Mexico, Daily Press, Carlsbad, New Mexico, not to decry those things, I want to know how big NEA is.

Mr. BERNSTEIN: They did about a million and a half dollars' worth of business.

The COURT: You mean per annum?

Mr. BERNSTEIN: Yes.

The COURT: All right.

Mr. BERNSTEIN: In the sale of printing, is that it?

Mr. FELDMAN: Both.

Mr. STEVENS: And you are willing to concede that there is a dispute as to whether that is in evidence?

1760 Mr. BERNSTEIN: There are no—

The COURT: I am trying to get, Mr. Stevens, an idea if NEA is anything like Hearst in the field.

Mr. STEVENS: No, no.

Mr. BERNSTEIN: Nonetheless, it transferred this business to Greater Buffalo under an arrangement whereby the contract provided that the price which Greater Buffalo would print for those newspapers, the price that it would charge NEA for printing for those newspapers—I will state that again—the contract provided the price that Greater Buffalo would charge NEA for printing for the newspapers and, in addition to that price, NEA was to be remunerated so much for each supplement that

was printed. There was a second contract which provided that for any new business that NEA brought in Greater Buffalo would print that new business at its regular contract rates that it charges anybody else and it would give NEA a remuneration on that new business.

1761 Now, NEA contends that this is no more than a usual commission arrangement, a sales commission arrangement, no more than a liquidation of a plant, what is wrong with that, the plant wasn't making money, we can liquidate too. Again, we get into the dual role of customer-competitor. NEA had a perfect right to liquidate the plant if it didn't want to print any more. It had the right to go to some other color printer who, at that point, was not the dominant printer in the industry and did not have sixty-four percent of the business. It could go to that other printer and say, 'I'm going to turn these accounts over to you; as long as you print for these accounts I want a kick-back or a commission', but when it turns that business over to the dominant printer under an arrangement that no matter who is the seller, whether Greater Buffalo sells, whether King sells, whether NEA sells to that news-
1762 paper, if it is printed by Greater Buffalo, NEA is going to get a kickback on it. The euphemistic term is sales commission, but it is not a sales commission if King gets the business, it is not a sales commission if Greater Buffalo gets the business. As long as it is printed by Greater Buffalo in perpetuity NEA is to receive a kick-back.

The COURT: You said that NEA could go to anyone and get a kick-back. What is this kick-back, what are you talking about?

Mr. RAICHLE: It is an unpleasant term for commission.

The COURT: A discount?

Mr. BERNSTEIN: It is something more than that.

The COURT: No, I want to know; you say a kick-back; to me that has an odious connotation.

Mr. BERNSTEIN: Yes. It means—it is odious for this reason—

The COURT: You said they could go anywhere and get a kick-back; is that the ordinary thing?

1763 Mr. BERNSTEIN: No, it isn't ordinary. Probably they wouldn't get it anywhere. They got it only from Greater

Buffalo. The reason for it was Greater Buffalo's peculiar position in the industry.

The COURT: Was it a discount or a kick-back?

Mr. BERNSTEIN: It is a kick-back for this reason——

The COURT: I don't understand that, frankly, what is a kick-back? I want somebody to print my color supplements and I go to a certain person and ask him to print them; and they say they will give me a discount. Now, what is a kick-back?

Mr. BERNSTEIN: If I go to the same printer and I'm a competitor of you, they have to give me the same discount, otherwise they are violating the law. They are not permitted to discriminate in price among competitors, they have to charge them the same price. So NEA can't be charged a different price

for printing for the newspapers, that is the whole point.

1764 NEA's contract with Greater Buffalo is that Greater Buffalo will charge the newspapers its regular contract price. NEA is going to charge the newspapers the same price it charges any other newspapers. NEA is going to—excuse me—Greater Buffalo is going to charge NEA, as a syndicate, a certain price. NEA, being a syndicate, cannot be charged more or less than any competing syndicate, Greater Buffalo has to charge them the same price, but Greater Buffalo provides with NEA “that regardless of how cheap I sell you the product, as long as I am going to print that, even if King gets the business, I am going to remunerate you”; I say that is a kick-back. It is a profit over and above something that he is normally entitled to in the normal business arrangement.

Now, NEA says that if Buffalo Color Press wanted to liquidate its plant it was free to sell it to somebody under
1765 a contract that the purchaser would not compete, that NEA would not compete with the purchaser for a limited period of time. NEA tries to assert that here, because Buffalo Color Press is selling its business to Greater Buffalo and says, “As long as you are going to print I want to be remunerated for it, it is nothing more than a sales commission.” What is the anti-competitive effect of that? Greater Buffalo, when it goes to quote a price to some other syndicate for the particular newspaper that had once been NEA's customer, would have to charge it the same price by law. That means NEA, in seeking that business, has that advantage over the other syndicate because he is getting that discount that

the other syndicate is not getting. He has got that built in perpetuity because of his deal when he transferred the account originally. That is illegal, he can't do that. That is the illegal part of the arrangement. The Government——

1766 Mr. STEVENS: May I ask, do you claim there is any evidence on that subject?

Mr. BERNSTEIN: Yes, the evidence is P-28 and P-27. The evidence is P-27 and P-28, it is contained in the agreement.

The COURT: Pass that up.

Mr. BERNSTEIN: It is contained in the agreements themselves. I pass up P-27 to the Court and P-28.

The COURT: Give me the paragraph.

Mr. BERNSTEIN: Yes, your Honor, Paragraph 4 of P-27, page 2, says: "You agree to do supplement printing on order from any or all of the named customers at your established schedule of rates," and then the customers are set out in the appendices to this contract, and then page 3, paragraph——

The COURT: I am looking at P-27, you're looking at P-28?

Mr. BERNSTEIN: I am looking at P-27, your Honor.

The COURT: Paragraph 4?

Mr. BERNSTEIN: P-27, Paragraph 4, page 2, it says: "You agree to do supplement printing on order from any or
1767 all of the named customers at your established schedule of rates", then subject to certain exceptions. Then page 3, it sets forth what the established rate is in paragraph 4. Then on page 5, paragraph 6, it says: "In consideration of the supplement printing turned over to you under this agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows: six and one-quarter cents multiplied by the number of pages." Sub-paragraph (c) says there will be furnished a statement monthly as to how much work you have done; and then on page 6, paragraph 8, it says: "This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues
1768 to do supplement printing in the United States of America."

Mr. RAICHLE: Excuse me for interrupting, we are entitled to know; where do you claim it says that business other than that turned over? You are talking about if we went out to the newspaper and got the business.

Mr. BERNSTEIN: On P-28, to answer Mr. Raichle's question; P-28 refers to new customers, it refers to customers that NEA may subsequently bring in, customers not then on NEA's books at that time. It is somewhat the same, but then we turn to—excuse me—paragraph 2, page 1: "You agree that you will do supplement printing for the new customers at your established schedule of rates," and then there is reference to the rates, and then we go to page 3, paragraph 4: "In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree that you will pay us"—now we are talking about printing, your Honor.

The COURT: Wait a minute, page 4?

Mr. BERNSTEIN: Page 3, your Honor, paragraph 4.

Mr. RAICHLE: "New customers we secure for you."

Mr. BERNSTEIN: Excuse me, Mr. Raichle, you will have an opportunity to respond. I cannot proceed orderly if I am interrupted. Paragraph 4 says: "In consideration of the new customers we secure for you——"——and note the conjunctive—"and of the supplement printing you may do for those new customers, you agree that you will pay us an amount to be determined as follows"—and then it is the same basis, the six and one-quarter cents. On page 4, sub-paragraph (c): "You agree that each month you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered to new customers during——" that means work that has been printed for the new customers, regardless of whether the business was gotten by King or anybody else—"during the next preceding month. With each such statement, you agree to pay us or our nominee the amount to which we are entitled——" and then it provides that this continues in perpetuity.

Now, the full effect of this agreement was that whatever business was involved, a million and a half, whatever the dollar amount of that business, in effect, the competition between Greater Buffalo and NEA for that business was reduced or restricted to the amount of this additional remuneration because Greater Buffalo would say, "Well, we are doing the printing anyway, we are getting the printing, we have to give NEA a kick-back on it, if we get the business from the newspapers ourselves we will make the additional profit." To that extent, there was opportunity for competition, but, nonetheless, their

incentive was reduced by their agreement with NEA
1771 that they would give them the kick-back.

The Government is not relying only on that, the Government is relying on P-33—exhibits in evidence against NEA, P-33, P-32 and P-34, which show that Greater Buffalo and NEA had an understanding or an agreement that they would not compete for each other's customers unless they could discuss it in advance and arranged it in advance. P-32 is a document dated December 5, 1956, which Koessler writes to NEA, and he says, "We will discuss with you the accounts we consider to be our private preserve", implying that NEA's customers are its customers, and Greater Buffalo's customers are its. Now, if there was any doubt of NEA's knowledge that there had been something anti-competitive—

The COURT: You mean before they got in?

Mr. BERNSTEIN: I say, if there was any doubt—

The COURT: I said, before they got into the arrange-
1772 ment?

Mr. BERNSTEIN: If there was any doubt at the time they made this arrangement with Greater Buffalo, if there was any doubt in their minds there had been an anti-competitive arrangement between King and Greater Buffalo that permitted Greater Buffalo to acquire International, that doubt must have been dispelled when in the fall of 1955, a few months after Greater Buffalo had acquired International, Koessler invited Nicht to meet with NEA's representatives. They met in the Hotel Beverly, according to Nicht's testimony, and according to Nicht's testimony they agreed that they would stop bothering each other, or not compete for each other's customers. Now, at that point of time, when NEA made that agreement with King not to compete for its customers, having previously made an arrangement with Greater Buffalo not to compete with it for its customers, at that period of time, knowing that
1773 competition between King and Greater Buffalo was eliminated by the acquisition of the Sylacauga and Lufkin plants, and the very contract between NEA and Greater Buffalo that Your Honor has just read, P-27, made provision that "the printing will be done at Sylacauga and Lufkin plants which you now have under construction." The plants were not open yet, it wasn't opened until 1958, Lufkin. Sylacauga didn't open until 1963. But the contract, P-27, provided that the printing would be done for those newspapers in either Syl-

cauga or Lufkin, or whichever plant it was to be done cheap. At that time NEA knew that the competition between King and Greater Buffalo for Lufkin and Sylacauga had been eliminated. When it then agreed with King not to compete with it for its customers, in the eyes of the law the legal effect of that was that it joined the existing conspiracy between King and

Greater Buffalo not to compete for each others' customers. It joined that and its purpose was clear. Even though it counted for an insignificant part of the printing business, regardless, it turned that printing business over to the dominant printer, added to its domination. So it then intended that Greater Buffalo dominate the printing and that NEA, King and Greater Buffalo share in the sale of the color supplements. In other words, if you can't lick them, join them.

Now, one of the defendants——

The COURT: Let me ask you this, Mr. Bernstein, as an old prosecutor; weren't you looking for a witness more than a defendant? NEA; weren't you looking more for a witness than a defendant?

Mr. BERNSTEIN: They could be both, your Honor.

The COURT: I say, wasn't the Anti-Trust Department looking more for a witness than a defendant in trifling with NEA; or is that too much to ask?

Mr. BERNSTEIN: I will answer it this way, your Honor. I want to invite the Court's attention to the fact that this case——

The COURT: I will decide this on the merits. Weren't you actually joining NEA in the hope of having a witness?

Mr. BERNSTEIN: No, your Honor. The point is this; we have conduct over a period of 1954 through 1960 that has to be looked at. When we look at the conduct we find several violations.—An important violation that we found was a tie-in by NEA and King, that was an important part of the violation, and Greater Buffalo, as a printer, relying on the fact that the newspapers must have a license, the Government realized it has to attack that evil as well. That is still in the case, that will be attacked.

The COURT: I know you do the best you can, and I have been through this myself with cases. But I say, it seems to me NEA is a trifling thing in this picture.

Mr. BERNSTEIN: No question about it, and——

The COURT: I am not criticizing your zeal.

1776 Mr. BERNSTEIN: It is not zeal for zeal's sake; NEA has to be made a defendant in this case because, as the defendants point out several times in their briefs, this is not a criminal case for punishment, this is a case for equitable relief. Because of the procedures we have put the relief part of the question a little off until culpability is determined. The Government recognizes that it bears the burden of demonstrating to the Court that now, in 1966—forget what happened in 1954—what can we do to cure this.

The COURT: We have had a big afternoon and we are going to have a bigger one; why did King get out, tell us that?

Mr. BERNSTEIN: Why did King get out of the case?

The COURT: Tell us what you had in mind with King before they got out with the consent decree.

Mr. BERNSTEIN: The Government hasn't let King out of the case at all.

1777 The COURT: They are out of my case.

Mr. BERNSTEIN: No, they are in this case for the purposes of relief. They have the opportunity——

The COURT: Look, you know what I'm talking about. King is not a defendant in this case.

Mr. BERNSTEIN: Oh, you mean why did the Government permit a failure of adjudication of culpability on the part of King. The sole reason for that, your Honor, was that because this is a case for relief there is no relief necessary as against King insofar as the conspiracy to monopolize case. As far as that aspect is concerned, Greater Buffalo is the one against whom the Government needs the most relief, Greater Buffalo is the one against whom it must establish its evidence. When King came to the Government and said, "We will give you whatever you want, you lay out the provisions of the decree, we will give it to you, how can you put us to the burden and expense

1778 of going to trial if you do that"; the Government felt it would be inequitable, an improper position to insist upon its remaining as a defendant in the trial when it did not need an adjudication of its participation in the conspiracy to monopolize in order to get the relief which the Government has already received.

The COURT: What you are saying is that Walter Koessler of the Greater Buffalo Press is the prime mover?

Mr. BERNSTEIN: No, I would say that Walter Koessler of Greater Buffalo Press and Nicht, King, were the two prime movers, yes, they are equal.

The COURT: Nicht is long ago and far away. Look, what you are saying is that the target is Greater Buffalo Press.

Mr. BERNSTEIN: Greater Buffalo and—yes, that is the principal target, as far as correcting the conspiracy to monopolize, yes.

The COURT: You don't claim that King wasn't in there up to their ears?

1779 Mr. BERNSTEIN: It certainly was, it certainly was.

The COURT: But you let them out?

Mr. BERNSTEIN: There is no practical purpose in getting an adjudication that they conspired to monopolize. If this Court finds that Greater Buffalo conspired to monopolize with King, and there is an adjudication of that fact, you don't need King in the case to adjudicate that. Greater Buffalo cannot conspire with itself, it has to conspire with someone, and this Court will then have the adjudication that Greater Buffalo has conspired with King.

The COURT: I could never understand why King went out of this case.

Mr. BERNSTEIN: Well, I can explain why King wanted to get out of the case.

The COURT: I am sure Walter Koessler would like to get out of this case, too. I could never understand why King went out.

1780 Mr. BERNSTEIN: Koessler couldn't get out of this case voluntarily with the Government's consent unless he agreed to the relief the Government asked for. King did that. The Government isn't here for the purpose of serving—

The COURT: I am not criticizing you, Mr. Bernstein. I know you as a man of tremendous integrity. I mean that right from the heart. Do you remember when we first started this case, there was a mystery about it. I will never forget the day I heard the case, the opening day, there were certain positions taken by the Government I never understood yet, and they changed like the twilight changes, and I never understood that. We went on with our affairs. We had Senator Sparkman having his nose in the picture from Alabama, for whatever political reasons he had, and I never understood that.

Mr. BERNSTEIN: May I try to explain?

The COURT: No. I am telling you that this case has
1781 been cloaked with peculiar overtones. There is no over-
tone now, I know you are here presenting your case well
and ably, as is your colleague. Of course, the power of the press
has always been important. I could never understand—and
you may say by now you should, I still don't. Anyway, I could
never understand why Hearst went out with General Brownell
as the attorney who is here, and then we have the present situ-
ation. It's all right with me, but I do not understand it at all.

Mr. BERNSTEIN: Well, I would like—

The COURT: Maybe I'm thick, as we say, in the wood. I
often wondered.

Mr. BERNSTEIN: I would like the opportunity of explaining.
If your Honor wants to hear that now, I'll be glad to do it, or
I will defer that to some other time.

The COURT: I think that it is better you defer it.

Mr. BERNSTEIN: Right. I would like to proceed to—

The COURT: Would you like to explain that, the
1782 moves that went on from the time I first got this case?

Mr. BERNSTEIN: Yes, I will be happy to.

The COURT: Do you think it meritorious?

Mr. BERNSTEIN: I think that it would clear up some doubts
and—

The COURT: Go ahead; Senator Sparkman from Sylacauga.

Mr. BERNSTEIN: When the complaint in this case was made
it made the same allegations that has been elaborated on during
this trial. At the time the complaint was filed Sylacauga, Ala-
bama had not yet been opened, the plant at Sylacauga, Ala-
bama had not been opened, and the plant at Sylacauga, Ala-
bama was built by Greater Buffalo through a subsidiary with
funds that had been contributed by the people in Sylacauga
as a development. When the Government received information
that a printing press and presses were being removed from
International at Wilkes Barre and brought into Syl-
1783 cauga, Alabama, the Government believed it was im-
portant at that time, that it was essential at that time
to get an immediate adjudication of what we are seeking now,
to prevent the situation from deteriorating and getting any
worse. Therefore, it applied to your Honor for a preliminary
injunction that would prohibit the removal of any assets from
the plant at Wilkes Barre, Pennsylvania and prohibits the

transfer of any runs from International at Wilkes Barre to the Greater Buffalo plant at Dunkirk. This was submitted to your Honor on the basis of evidence and documents, much the same evidence that has been presented here——

The COURT: I know about that. I finally opened the plant. I'm talking about why Senator Sparkman was interested in this case from scratch.

Mr. BERNSTEIN: Senator Sparkman made representations to the Department of Justice that the continued closure or the prohibition of the Sylacauga plant from opening when 1784 it had the presses in it ready to go, was depriving the people in Sylacauga of the opportunity to work there and was depriving the people in Sylacauga who had made a financial investment in their plant. It was——

The COURT: This doesn't go to the merits. I wanted to know. I often wondered. That has nothing to do with the merits, I just wanted to know. All right.

Mr. BERNSTEIN: May I add this, your Honor? In view of all that, it is the purpose of the Government at this point to get a determination of culpability at this point, and then present to your Honor considerations, taking all of the equities in the case, the time that elapsed, who is in it, who is now a defendant, who is not a defendant, to determine what relief should be in order. The Government's legal position has to be this, its legal position has to be that this is an action for equitable relief and this conspiracy has not ended, and that brings me up to 1785 the principal defense in this case.

It is the defendant's, Greater Buffalo, contention that the conspiracy could not be continued because at that hearing, that your Honor referred to, for the preliminary injunction the Government contended that it needed the injunction to protect King, to protect Hearst, and therefore there must have been competition between Greater Buffalo and King, and since there is competition now the conspiracy not to compete is over and therefore there is no basis for equitable relief, the Government has no case. They point to the fact that in December 1955 Greater Buffalo took business away from King at the very same time that the Government contends there was this arrangement to keep each other's customers. So says Greater Buffalo, "What kind of conspiracy do you have here?"

In the first place, in January of 1956—there are exhibits in evidence, P-40 and P-17, January, 1956, in which
 1786 Koessler writes to Nicht and reiterates his understanding that "we are each to keep each other's accounts."

This is a few months after Koessler took some business away from Nicht. There is no evidence as to what went on, what discussions went on between Nicht and Koessler in the interim. The fact remains that Koessler found it necessary to reconfirm to Nicht that their understanding was that "we are each to keep our own business, each to keep the customer each other has." Furthermore, we recall Nicht's testimony that he had been promised fifty cents remuneration for all business put in Lufkin when it opened even if Greater Buffalo had that business. And finally, there is evidence in the record that after 1955, when Greater Buffalo took these accounts away from King, there were efforts made by Greater Buffalo to allocate customers with King in NEA's behalf and in its own behalf. Therefore,

1787 the Government contends what this argument overlooks is that an important part of the conspiracy, the important part of the intent of both Greater Buffalo and King, was that Greater Buffalo was to monopolize the printing of all of the printing done for color comic printers, and that is still continuing, because by this illegal arrangement, whether it stopped or not, by that illegal arrangement Greater Buffalo was in a position to acquire International. It would not have been in that position to acquire International but for that arrangement. King would never have permitted it to get into that position. Then Koessler, once it was in that position, then turned around and the tide was turned. Up until that time King had controlled it, had the features, it was tying in the features, and Greater Buffalo relied on the fact that the newspapers had to have features in order to do business. But
 1788 once Koessler lulled King into a false sense of security with these agreements that it would print for nobody else, once he had them he acquired International, then he turned around and he said, "I'm going to bring NEA into this picture, you two fellows get along and not compete." Just as these defendants had the dual role of customer-competitor, they also have the dual role of victim-culprit. Greater Buffalo is the victim to the extent NEA and King can tie in. King, especially, is the victim to the extent that as a result of its illegal conduct Greater Buffalo now is in a position where it dominates the

printing. You have to come into equity with clean hands. If King was before this court it would be thrown out. King isn't before this court. The public interest must be served, the Government is here to protect the public interest and to find out, in light of these facts, did this constitute a conspiracy to monopolize and if it did, then what can be done about it. The what can be done about it will be taken up at a later time.

At the moment I have nothing further to present affirmatively except with respect to particular documents. If your Honor would prefer that I defer comments on particular documents until after you have heard the defendants, I will be glad to do that.

The COURT: I have gone far away with you in discussing collateral matters. I think you know me well enough, and I think I know you well enough. I think that has been enlightening to me. We have taken a lot of time here, I have asked a lot of questions, some of which are not pertinent to the issue. But I think I should know about those things. I do not consider this a simple question. You have answered them well.

Mr. BERNSTEIN: Thank you.

The COURT: Had you finished, Mr. Bernstein?

Mr. BERNSTEIN: Yes, your Honor. The only thing that remains—I finished my argument—the only thing is to specify which documents are under advisement, which documents are for NEA only. If the Court permits, I would like to do that later, after we hear from the defendants.

The COURT: All right, fine.

Mr. RAICHEL: Your Honor, until I listened to my friend this afternoon I thought I had read and heard most everything that could be said on the subject of conspiracies. You hear about conspiracies among parents, conspiracies among salvors on occasion, and now we hear for the first time a representative of the United States Government, speaking on behalf of the Department of Justice, talking about a conspiracy between culprits and victims. If that is not enough to put this case in the strangest setting ever to be that within which any case was tried, we have the culprit consented out of the case and the victim remaining in it and, for good measure, a temporary injunction existing now, obtained for the benefit of the culprit, designed to tie the hands of the victim, and to prevent competition between the victim and the culprit, all for the benefit of the culprit.

Now, let us just do a little something in the way of review here. I preface my remarks with an observation in good humor, that I do not mind my friend coloring the exhibits for his dramatization, but I object to his coloring the facts. Like so many of his arguments, they need unraveling, and like so many of the statements made in this case, they need some correcting. Now, if your Honor will indulge me, I will not be as long as counsel found it necessary to be, but I would like to review for your Honor's benefit, and for a starting point of argument, some undisputed facts and then talk within the record concerning the more pertinent facts and then argue our position.

1792 We are here, as I understand it, to argue before your Honor the sufficiency or the lack of it of the prima facie case required as a condition of the receipt in evidence of various documents which your Honor has had under consideration, and the misconception of the Government appears on the first line of their brief—it is not too important, but it is rather striking as we read it. The brief on page 1, the first sentence of the brief says: "At the conclusion of the presentation of the Government's case the Court took under advisement plaintiff's motion that all documents received against one defendant be received against all defendants as admissions of co-conspirators."

That is the very thing that cannot be done, no matter how authenticated and otherwise reliable a document might be in a given case, not this case. It is not the matter of admissions which is received in any conspiracy case, it is declarations in the furtherance of the conspiracy. Admissions, indeed confessions, are never received against anyone except the one making them. That is just by way of preliminary observation of the misconception in that respect under which my friend labors.

Could we go back a minute and review this industry, the position of the defendants in the industry, and the acts and deeds, the statements of all of them. About the turn of the century King Features, by whatever name then known, a subsidiary of this huge corporate complex, Hearst, started a new industry, the printing and sale, the licensing, if you please, of colored comic features. The color comic feature business grew, became popular, widespread, greatly read, followed with interest by young and old, and as the years went by, from a very early beginning or at least a humble beginning, the industry grew to sizeable proportions where these gross sales and license fees and printing were in the sums of

1794

millions. Like any other industry, which has popular appeal and meets with success, it engenders competition. In the course of time King Features, as we shall call Hearst from time to time throughout this discussion, began to feel the effects of competition. As the years go by, we come to the year 1954; and without indulging ourselves and subjecting your Honor to all of the detail, the fact remains, and appears in the record, that some four hundred to four hundred and fifty newspapers were being printed in this country which were using color comic features on Saturdays and Sundays, mostly on Sundays. By that time Greater Buffalo, founded by a Buffalo family, fostered by its ability, acumen in the field, and a savings of an entire family used to finance it, and itself grown from humble 1795 beginnings to the point where it was printing for approximately one hundred forty or one hundred forty-three newspapers colored comic sections.

The COURT: They were successful?

Mr. RAICHEL: They were successful in the old tradition, and as their success became manifest, Mr. Nicht, whom we have referred to often, became resentful, indeed alarmed, and we find this correspondence and memorandums back and forth between Nicht and his employers as to what he was doing to meet the competition which was growing from the Greater Buffalo source.

In the meantime, Scripps Howard papers, in a smaller way, that is, smaller than Hearst, King Features, was also developing as a competitor in the field. Various other color printers were in the business, not so large, not so efficient, but in the business. Now then, Hearst, King Features, had a captive printer by the name of International Color Printing, owned by a family 1796 in Wilkes Barre by the name of Govine, and over the years had been able to dictate to this family the price at which the International company would print for Hearst. Captive, captive and oppressed, and as the price was driven down and the earnings declined and the surplus melted away, the year 1954 found International Color Printing in extremes. International Color Printing sought to sell its plant to King Features, Hearst. King Features, despite its almost unlimited financial resources, did not see fit, did not desire to make the investment of some six or seven hundred thousand dollars required to be made to effect the purchase. An alternative was presented, pay a reasonable price, a higher price for the print-

ing so that this International company could exist and this family could live. That alternative, to the greedy Hearst, was unacceptable. In that situation, Koessler, Greater Buffalo Press, learning of the opportunity, as they considered it to be, to purchase the International Color

Printing, came forward after Hearst had declined and repeatedly refused the entreatments of International to sell them, after Hearst was unwilling to raise the price and pay reasonably for the printing and save the company, Greater Buffalo purchased the stock from the family. Hearst had absolutely nothing to do with the sale of the stock of International Color Printing, and if there is one fact that I want to stress it is the fact that Hearst owned no stock, controlled no stock, the family decided to sell, and all this talk claiming that Hearst had something to do with the sale of it to Greater Buffalo is outside of the record, unfair, improper and ought to be nailed as a misstatement at the early part of my argument or any consideration by your

Honor of this record. There is not a scintilla of evidence that Hearst had anything to do with the sale, and the evidence is to the contrary, and six months or more after the purchase by Greater Buffalo Press of International, Greater Buffalo Press enters into a contract with Hearst. That is the first misstatement that I want corrected.

The second one is a serious one, and that is this. Counsel stood here and told your Honor, inadvertently, I am sure, and I share your Honor's view of his integrity, but his recollection does not measure up to his integrity if it is entitled to the high accolades your Honor has accorded it; and he said that in the contract between Greater Buffalo Press and Hearst that Greater Buffalo Press agreed not to print for any other syndicate. That is not so, the contract is in writing, it is here before your Honor.

If there could be a question about that, if he dares to question it, I will stop and read it or wait while he reads it—

Mr. BERNSTEIN: I question it.

Mr. RAICHLE: —checking him as he goes along—

Mr. BERNSTEIN: I question it.

Mr. RAICHLE: Wait a minute, you are through until I get through.

Now then, what is there to criticize, I ask rhetorically at that point. Koessler made an investment, Greater Buffalo made an investment which Hearst was unwilling to make. They acquired

this company, they enter into a printing agreement with Hearst for a period of ten years, to be sure. There was no agreement not to print for anybody else. Nicht sought that agreement and was unable to obtain it. Who is the culprit, who was the predator; Hearst. Who is the man who is seeking to seduce everybody else to enter into these illegal agreements; read the correspondence that is in evidence and that which cannot come into evidence and you will find the fact to be that it is always Nicht; Nicht pushing for an agreement, Nicht pushing for an exclusive agreement, Nicht pushing for a side agreement; he is the one who plays the role of Fagan here with everybody.

Now, counsel read to you some paragraphs from Exhibits P-16 and P-15. I am sure without any intention of so doing, he read as if he were reading provisions of a contract. What does each letter say? The letter, P-15, June 2, 1955, written on the letterhead of Greater Buffalo Press, signed by Mr. Koessler, to be sure, says: "These are the points discussed in New York, on which we agreed could go into a contract, between King Features Syndicate and Greater Buffalo Press." June 13th, some days later, eleven days later, he said again: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate and the Greater Buffalo Press." The important fact is that when they consulted counsel it was decided that no such contract could safely or, let's face it, properly be made in the light of the zeal of the Anti-Trust Division.

The COURT: Now, Mr. Raichle, where is the proof of that fact?

Mr. RAICHLE: There is a letter, something about it would be dynamite.

The COURT: I remember that letter.

Mr. RAICHLE: Now then, it might be all right for a poet like Milton to say "Not by what he does but by what he would do is a man to be exalted"; certainly a man is not condemned or to be punished in a court of law because he was induced to have a flirtation with a man named Nicht who was seeking to induce him to enter into an improper contract. So there is no agreement, there never was an agreement between Greater Buffalo and King Features that Greater Buffalo Press would not print for some other syndicate.

The COURT: Pardon me, you say that all this inter-
1802 course between Nicht and others never culminated?

Mr. RAICHLE: Never culminated. Now, let me see how buttressed that statement is, how unassailable it is as a matter of positive fact. Your Honor has in mind, I can see clearly, as I think we all should have, the claim of the Government is that the essence of this conspiracy charge in the complaint in so many words, and reiterated time and again in this court, is that there was an agreement between Greater Buffalo Press and King Features not to compete with one another. Your Honor has in mind the statement made by counsel that Nicht and Koessler agreed, either in writing or discuss the matter of leaving each other pretty much alone, and all that sort of thing. I say that was never consummated, and before I marshall the evidence to show it wasn't, let me call your attention to the—
what shall I say—the minimal character of the proof
1803 offered in an effort to sustain a claim that even in an interim way or temporarily or in some isolated transaction that was done. He goes back to the year 1954; twelve years ago, twelve years ago. Let me not exaggerate, we are only in the month of January; eleven years ago; and he says there was a time when the Gannett papers decided to cease the printing of the colored comic sections for Utica and Binghamton, and that Hearst and Koessler divided it, Koessler taking Utica and Hearst taking Binghamton. Well, when you look at the document relied upon, it is a telegram of seventeen words from Koessler to Nicht, saying that he has talked to a fellow named Bittner, and Bittner wants the printing for the Binghamton papers done by International, Hearst, that he has the Utica job. It turns out that Binghamton is forty-five miles from Wilkes-Barre where International was located, and that the price which Koessler would have to pay for the
1804 transportation from Buffalo is more than the printing cost. The logic of the thing, the business dictates of the situation, if you please, were such that Hearst got the Binghamton job near Wilkes-Barre, almost in the backyard of Wilkes-Barre, Koessler got Utica. An isolated, single transaction of eleven years ago.

"Oh," they say, "It wasn't a single transaction, there was another one." We go west to something called Waterloo, Iowa.

Four hundred and fifty papers in the United States and they pick Binghamton, Utica and, last but not least, Waterloo, Iowa. I am not informed as to the circulation of the paper or the value of the printing job, but the documents in evidence if I recall correctly, show that this paper wanted, instead of the customary eight-page comic, wanted six pages and, as Nicht says in

one of his letters or memorandums, in evidence, he didn't much want the job because he wasn't in a position to compete with us in printing six pages, he could compete with eight, he could not compete with six that they wanted.

Now, what are we talking about that for in a big anti-trust case, a federal case, those two incidents of eleven years ago. He points to no others.

Now, let me recall to your Honor, if I may, and point out the incongruity of the situation. The charge is that we entered into a conspiracy not to compete with Hearst. What does the record show? It shows that between 1955 or 1956 and the present time, that is, up to the time of the granting of the preliminary injunction, which I will discuss in a minute, we took away from Hearst twenty-six sizeable newspapers. That appears in evidence from the answers to an interrogatory which

has been put in evidence. Indeed, the competition which they say was allayed, eliminated and wrongfully stifled and which arrangement still continues, or pursuant to an arrangement that has continued through the years and still continues, was so fixed or was so honored in the breach, the arrangement, that Hearst was facing ruin if it didn't get an injunction in its behalf which would stop that.

Your Honor, just think about this in the face of the claim here that there was an agreement not to compete, and this law suit is predicated upon that. The lawyer who makes the claim stands before your Honor in the year 1961 and says this to you: "Now, within recent times Greater Buffalo, which of course controls International, has gone out and has displaced King Features Syndicate and by displaced I mean King Features Syndicate would have an existing contract for printing for the publisher and they in turn would get publisher's printing from International. Obviously, Greater Buffalo knows and controls the price upon which International sells the color comic supplements and Greater Buffalo

can go out and instead of quoting a price to the syndicate, which in turn has to make a profit, can quote the same price offered to the syndicate to a particular publisher. This has happened. The plaintiff has been informed in Texas there are more solicitations. Although Greater Buffalo has basically been the printer and King the seller for the same accounts basically, the trend has been for Greater Buffalo to take business away from King Features Syndicate." How on earth can a man reconcile his claim that he is entitled to some relief before your Honor, whatever he could conjure it to be, on the theory there is an agreement not to compete which is continuing and ought to be stopped, when he asked your Honor for an injunction to save the culprit from the devastating effect of competi-

1808 tion so severe that he cries out against it? I know that consistency has never been one of the lamps of advocacy.

There has to be some theme, there has to be some consistency with respect to the facts. I don't care how inconsistent the man wants to be in his intellectual gymnastics when he comes to applying the law or interpreting the law, but I say that the sovereign, our government represented by the Department of Justice, must have some consistency with respect to what it claims the facts to be.

Now, there is either competition between Hearst and Greater Buffalo Press or there isn't. If there is competition and it has continued through the years, that ends this claim that there is a conspiracy not to compete. If there isn't competition between the two of them, then I say that the preliminary injunction, under which Hearst now hides for protection from our competition, should be dissolved here and now, and I
1809 ask counsel to stand on his feet when I get through and tell your Honor whether he wants that injunction continued or not.

Now, let me illustrate, if I may, while I am——

The COURT: Let me say, if there isn't competition I would be most surprised.

Mr. RAICHLE: He said there isn't.

The COURT: I would be most surprised. I want to hear from you on that, Mr. Bernstein.

Mr. RAICHLE: I would be glad to subside now.

The COURT: No, go ahead.

Mr. RAICHLE: The temporary injunction in its present form forbids us to take any run from Wilkes Barre to Sylacauga,

except those specifically permitted when the temporary injunction was relaxed, and that was to permit certain runs from certain states or runs from certain states. I have in mind a particular instance. There was a paper in Little Rock, 1810 Arkansas, the Little Rock Democrat or the Arkansas Democrat. That paper is presently printed, that is, the color comic supplement is presently printed in Wilkes Barre and it is a Hearst account, a King Features account. Now, you take judicial notice of the fact that Little Rock is within a couple hundred miles of Lufkin, Texas, so we don't get into Sylacauga. A couple hundred miles from Lufkin, Texas, and we are forbidden by the injunction from going to the publisher of that Little Rock paper and saying, 'We can save you this transportation charge by printing at Lufkin; take it away from Hearst and give it to us' but the injunction which he sought permits their doing that. Talk about allocation of customers, talk about leaving each other alone, talk about not competing, why, the competition was so severe they had to step in, so they say, to prevent it, and then they say there was 1811 some understanding that we were not to print for any other syndicate. I pointed out that that just isn't so. They say there was a conspiracy not to print for another syndicate. We have printed for the other syndicates from the day we were favored with their business back in '55, '56, whenever it was, to date.

The COURT: Tell me, Mr. Raichle, what you think started this. Now, I don't say that someone always starts these things in court, but it is not normally the Justice Department. Tell me what you think engendered this whole thing back some years ago. If you have an impression it would help me understand.

Mr. RAICHLE: Yes, I have an impression, and at your Honor's request I will state it.

The COURT: You may wonder why. I think in most things, including being a judge, you wonder why these things happen.

Mr. RAICHLE: I will state it.

The COURT: It helps to understand it.

Mr. RAICHLE: I will state it without fear of reprisal. 1812 Hearst prints a newspaper, we don't. Hearst prints a chain of newspapers, Hearst was better received at the Department of Justice than we were. That is all there is to it, in my opinion.

The COURT: Well, go ahead.

Mr. RAICHLE: Now, let me amplify what I said. This case started out on January 6th, 1961, with a charge that Hearst was tying the sale of features, the licensing of features to the sale of printing, in clear violation, as it was claimed, of the anti-trust laws. In the argument made to this Court in the last day of the hearing, on the trial of the merits, some few months ago, Mr. Bernstein said we were the victim of that tie-in. So that after five years of litigation his mind hadn't changed, that the tie-in was illegal and that we were victimized. What does he say? He said we used poor judgment in not going to the Department when we were the victim of the tie-in; we 1813 shouldn't have done business with Hearst. Well, here we are five or six years later, the tie-in still continues, and any action on the subject is postponed until the fate of the victim is determined; and I say the welfare of the culprit, to use his words, is being better protected than the fate of the victim in that regard.

There was another consideration, in answer to your Honor's question; we have a government disposed to surrender many of its prerogatives to the labor unions; cowardice in high places. What happened? When we proposed to compete with Hearst by taking runs from Wilkes Barre to the new plant in the south the labor unions called upon the Department of Justice. We had labor people sitting in this court room protesting against the transfer of those runs. There is something funny about this case and I agree with your Honor. It started off to 1814 put a stop to the tie-in practice of Hearst. We were the victim, so he says, and Hearst was the culprit. Now what has happened? All that is gone. Now, the claim is made, variously made the claims are, one that we compete too vigorously, unfairly, with this monster, Hearst, and the other that we have agreed and have conspired not to compete. How does a man defend himself against charges of that kind sought to be sustained by arguments of that type?

Now then, I have made notes as counsel talked——

The COURT: Let me say right here that you are right, because I remember well the labor unions' interest. In fact, I remember well receiving letters, prompted or otherwise, by wives of workers in Wilkes Barre, imploring me to act one way or another favorable to the labor situation there. I don't understand that. You say there is something about this case; this

is the most remarkable case that I have had since I
 1815 have been on the bench. I hope I can go longer, maybe
 there will be something more remarkable. I have always
 wondered about certain factors in this case, including the hue of
 the Justice Department itself when it first came in here. I had
 a definite impression one time of the position of the Depart-
 ment and had seen it change. I don't understand that. This
 has nothing to do with the facts, I don't understand the ap-
 proach. Go ahead, please.

Mr. RAICHLE: Apropos of what we are talking about, I
 wanted one or two other things to be brought to your Honor's
 recollection. There can be no substance to the claim we are
 not competing. We are competing as vigorously as the outstand-
 ing injunction will permit. I pass to one or two of the argu-
 ments made by counsel. For ready reference, I would like to go
 to page 50 of his main brief, under the heading "Con-
 1816 clusion", because here we have very much the same sort
 of argument that he made here. This must be what he
 claims he has proved by way of a prima facie case; it is what he
 claims. "Conclusion: (1) Excluding evidence contained in the
 documents now being taken under advisement by the Court,
 the Government has proven that prior to the acquisition of
 International, King and Greater Buffalo agreed to allocate to
 each other their respective customers." I have dwelled upon
 that subject and demonstrated, I believe, there is no substance
 to the charge, and that sentence is without basis and fact.

Next, referring to Greater Buffalo: "They also agreed to
 allocate three new accounts; one to Greater Buffalo, one to
 King, a third to Greater Buffalo with a kick-back to King."
 Now, I know it is an old technique to use words like that, kick-
 back; they have a connotation of a program. It is nothing but
 a commission. Let me explain this for a second. Hearst
 1817 and, I think to some extent, NEA felt they had de-
 veloped an industry, that we were interlopers, they had
 created the market for some of our printing, that if they hadn't
 done a general selling job, sort of like institutional advertising,
 I suppose, there wouldn't have been this market for us, and
 they come around on occasion and ask for a commission. Now,
 that isn't the commission on stuff we sold ourselves, generally
 speaking. It is a commission now and then on something where
 they think they have opened the door—I'm talking about this
 Iowa place. They go on—there isn't much more here, your

Honor—"Having made these agreements——" that is, the agreement not to compete, which I think we have blown out the window—"Greater Buffalo and King then agreed to eliminate all competition between themselves." Well, again there is the twenty-six accounts we took away, the fact that 1818 the competition was so severe they had to be protected against it. The illustrations which I have given all bear on that. "Greater Buffalo was to acquire International and become King's sole printer," that is something that Nicht sought, he wanted to be our sales agent, we wouldn't have him, we didn't have him, we printed for everybody.

Now, it's kind of a strange way of putting it, but here it is, reading from the brief: "Greater Buffalo promised that it wouldn't print for competing syndicates but would allow all new accounts to go to King and keep only the business which it already obtained. Part of the latest agreements were executed——" —I don't know what he means by that—"Greater Buffalo acquired International and King contracted for International to be its printer for ten years. However, Greater Buffalo then abrogated that portion of the agreement in 1819 which it promised not to print for King's competing syndicate." There is no such agreement, there was no such agreement. I don't think counsel should have temerity to again assert there was. It did this by contracting to print for NEA, King's leading syndicate competitor. He seems to feel or evidence a feeling in that statement that we shouldn't have printed for the competitor. Damned if you do and if you don't with some of these fellows. "After NEA arranged to eliminate competition with Greater Buffalo, it agreed under the auspices of Greater Buffalo not to compete with King." I suppose that gets back to the time Koessler introduced Nicht to Walker; and one of the most unkind things, Mr. Bernstein, that you do, you talk about any agreement between King and NEA as involving Greater Buffalo, when Nicht testified clearly and unequivocally, under your questioning, that the agree- 1820 ment or the discussion, the possibility was only as between King and NEA and that it didn't involve Greater Buffalo Press.

One more thing here. This is probably a little thing. Sometimes, as I say, straws show the way the wind is blowing. It says: "The immediate results of the non-competitive agreement——" I'm reading from counsel's brief "were that newspapers were deceptively lulled into believing they were getting

the benefits of competition among the three conspirators; in reality the document evidence demonstrates that the ostensible competitors were in fact not competing." Now, just imagine, the wire services had carried the details of this trial and all its pre-trial proceedings into the offices of every newspaper in the land. All that any publisher, for the last six years, has had to do to know the facts about the relationships between these various companies, in their minutest details, is to read their own papers.

Now, there is one more thing and then I am through, and that is that talk about Lufkin. Do you remember counsel said—he had one of his charts there, reminiscent of another friend of mine by the name of Landy— anyway, they say that we wouldn't have opened Lufkin save for their business, they were giving us business so that we could open the Lufkin plant. Does your Honor believe, does Mr. Bernstein really believe that Mr. Koessler, who had been able to buy International Color Printing Company only because Hearst had ground it down over the years, captured it with its business, drove down the price, ruined the company, was going to not profit by that experience and open a couple of million dollars' worth of plant in Lufkin on the basis of business from Hearst? He isn't the

Koessler they claim he is if he would do such a thing as that. He wasn't going to be captured by them, he opened it with business that he took away from them, he opened it with business that he got from others, he opened it with business that he got by fair competition.

When we get all through with it, I have left unsaid much in the way of minutia that I might have referred to and there might be things in your Honor's mind I have overlooked, but let's get back to the first principle. This is an equity case, drastic equitable relief is sought under these confusing circumstances. Drastic equity relief is usually granted, always granted, only granted to put a stop, if it is negative in character—injunctive relief, we shall say, is granted only to cure an existing, persisting wrong or injury. Here it is non-existent. I can't, for the life of me, see on what basis counsel can claim that he has made anything resembling a prima facie case by independent evidence justifying the admission of these disputed documents. Thank you.

The COURT: Mr. Stevens?

Mr. STEVENS: If the Court please: on behalf of NEA I cer-

tainly subscribe to the statements of Mr. Raichle, that it is difficult in the extreme to see how the Government believes that it has made a prima facie case in this proceeding. Speaking specifically as to NEA, the thrust of my presentation will be first that the plaintiff has wholly failed to show any knowledge in NEA of any prior existing conspiracy, even assuming that one did, in fact, exist. Secondly, to demonstrate to your Honor there was nothing in the sale of Buffalo Color Press, which I shall refer to as Color Press, which was related in any way to any conspiracy, to say nothing of the supposed pre-existing conspiracy which NEA is supposed to have joined. Thirdly, I shall touch briefly upon the so-called "Beverly truce" and

1824 show to your Honor that such truce was a wholly temporary arrangement adhered to at most by Hearst in one or two instances, existing solely, as Mr. Raichle has properly pointed out, between NEA and Hearst, not a separate charge in the complaint in this case, and long since wholly abandoned by NEA, if indeed the proof shows that it ever adhered. Finally, I believe the proof shows and I will undertake to submit to your Honor that there is no evidence in this case admissible against NEA of the size and nature of its participation in this whole field of activity. Indeed, the statements repeatedly made today and the argument by counsel for plaintiff was that the share was insignificant.

Turning to the first point in the argument, that is, there is no proof of knowledge in NEA of any prior consisting conspiracy. I am sure that your Honor observed that even in 1825 his zealous and properly zealous efforts early in the day, counsel for plaintiff at no time said that NEA knew of the existence of the conspiracy. Indeed, at no time in this case has there been a direct charge, let alone any direct proof, that NEA had any positive knowledge of this supposed prior existing conspiracy. What has been presented to your Honor is a curious assemblage of documents which show nothing more than that NEA, a small factor in the color comic supplement business, in 1954 and 1955 was striving to find out what was developing in the business, and that it was undertaking to determine whether or not it was true, for example, that Mr. Koesler and his associates were going to put up a plant in Lufkin. The series of exhibits which refer to this subject run from 44 through 51. The first is a letter dated March 30, 1954, from

1826 Mr. Walker, then a vice president of NEA, to Eli Minton, one of the representatives of NEA in Texas. It discussed rumors which they heard as to whether or not there was going to be a plant there. Indeed, it refers to a talk which Mr. Walker had with one of the Koesslers on the subject.

Then in May there was an exchange of letters between Mr. Walker and a man, John Blake, Scripps Howard Supply Company; and another letter from Walker to Minton forwarding what the gossip was as to whether or not a plant was going to be built. In June this man, Minton, wrote back to Walker and said, well, he had talked to Jim Chambers, one of the Dallas papers, and Jim says he heard that Hearst is going to put some printing in the Lufkin plant, it is going to go forward. Then from June it dropped down to October of 1954 and there is another letter from Walker to Minton on this same subject.

1827 There are two letters in early 1955 dealing with an effort by Mr. Walker to find out what the facts are about building a new plant in Sylacauga. Here was a little fellow in the industry striving to find out what was going on, and Mr. Walker wrote to the fellow, I believe his name was Frier-son, who was on one of the papers in Birmingham, "What do you hear about that?" He wrote back and said, "I understand there is going to be a plant in Sylacauga."

The COURT: Excuse me. That little list I read, are those your clients?

Mr. STEVENS: Those were some, yes.

The COURT: Who are your bigger clients?

Mr. STEVENS: I think some of the bigger ones—let me take a look here.

The COURT: I mean, give me an example.

Mr. STEVENS: I think some of the large Scripps Howard papers. I'm sure the large Scripps Howard papers would be among them.

The COURT: I wanted to know. You said this man was interested in where the business was going?

1828 Mr. STEVENS: That is right. He wanted to know where the new plants were going to be. Anybody in the color comic supplement printing business knows that freight is one of the large factors, and if there was going to be a new plant in the southeast, where Hearst was already by far the dominant factor, NEA could see if it didn't do something to protect itself, its interests down there were going to evap-

orate in the face of the new plant which Hearst might control and which could serve the other papers.

Finally, the climax in this series —

The COURT: What plant was it that Hearst might control?

Mr. STEVENS: The possible plant in Sylacauga. Back in the early days when Hearst was importuning International to put a plant down there.

The climax in that series of documents, and it is the total proof in this case which is supposed to put positive 1829 knowledge in NEA of the existence of this supposed conspiracy, there is a letter dated August 2, 1955, from Mr. Walker to Mr. Walter Koessler, congratulating him upon the acquisition of International by Greater Buffalo, and in that letter Mr. Walker said that he was surprised that he didn't know anything about it before. Now, if that isn't one of the most curious ways in which to submit to a court that there was proof positive or proof upon which a court could reasonably find the existence of knowledge of a prior existing conspiracy and, as your Honor heard Mr. Bernstein speak this morning, he said, 'We think that NEA believed this, that they believed that, and that they believed something else.' On these points, which Mr. Bernstein says he thinks NEA believed, from this piddling sequence of correspondence running from March of 1954 to mid-1955, the whole concept of our knowing about a prior existing conspiracy, which if it existed at all, your 1830 Honor, was not a conspiracy of mere civil proportions, it was a criminal conspiracy because they repeatedly talk about allocating customers, indeed they have talked about fixing prices. These are things which we were supposed to have deduced, just as they would now have you infer from these items of information that we knew a prior existing conspiracy, violative of the Sherman Act, was in process.

Now, in our briefs we have discussed these documents in detail I know the hour is late so that I won't review the documents seriatim. The fact is, your Honor, not one element in the proof of this case drives home to NEA the kind of knowledge which is absolutely foundational to the case which the Government would make against NEA, because throughout this entire proceeding, it is perfectly plain that NEA has initiated nothing. If NEA is at fault at all, it is because 1831 NEA is a joiner, even according to the Government, and what we are supposed to have joined is a prior existing conspiracy, and we certainly had to know of its existence, we

had to know of the evil intent, we had to know of the purposes of control, we had to know of the intention to dominate. Now, there are other tests which can be applied to show that we certainly did not know those facts because, your Honor, if a conspiracy existed—again, I agree with Mr. Raichle that no such conspiracy did exist—that if it existed, who do you believe was one of the prime victims of that conspiracy? It was NEA; and who said it was one of the prime objects of the conspiracy? Our friend, Nicht, and he did it in a document your Honor should read.

The COURT: Nicht is dead.

Mr. STEVENS: That is correct, but this is one thing Nicht would have trouble denying. He is writing to Mr. Koessler in August of 1955—I refer to P-25—"Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye to eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process."

Now, that is the kind of a bedfellow we are supposed to be crawling in with.

The COURT: There is no later letter?

Mr. STEVENS: Yes.

The COURT: I don't want to hear all the letters, I remember reading them. I don't want to cut down on your argument, but I was thinking maybe there is other letters of another tenor. Go ahead.

Mr. STEVENS: Here is a letter, your Honor, which shows that even after we were supposed to have joined up that Mr. Nicht felt the same way toward us.

The COURT: He persisted?

Mr. STEVENS: He persisted. You will recall by date we were supposed to have had a ceremonial wedding along in October when we signed Exhibits 27 and 28, I think it is, but here is a letter dated January 26, 1956, plaintiff's exhibit 40, from Mr. Koessler to Mr. Nicht. Now, the background of this is that Scripps Howard have papers in Memphis, and the comic color supplement business for those papers is very good business. Nicht was urging that Mr. Koessler and Mr. Nicht cop off that for themselves. Mr. Koessler was indicating that he didn't think

that was practical. He said, "I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives. The Greater Buffalo Press as the Greater Buffalo Press, has been working in Memphis for the past five or six 1834 years and I know that if any change is made it will be kept in the family. If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it. The alternative——"

The COURT: Skip over the last part, but whose letter is that?

Mr. STEVENS: Koessler's letter to Nicht.

The COURT: Read it.

Mr. STEVENS: "If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it. The alternative would be for NEA to take the job to St. Louis which is too close for comfort."

In other words, your Honor——

The COURT: What date is that?

Mr. STEVENS: That is January 26, 1956, only two or three months after we were supposed to have joined this whole affair.

The COURT: That is before he had Mr. Raichle for his lawyer, I take it? Gentlemen, I have enjoyed this afternoon's 1835 discussion, we have kept it a little light from time to time, and I have heard serious arguments; and my remarks must be borne with just because I have been here since ten and I have to have a little indulgence once in a while. I want you to take nothing from my remarks, of course. Did you want to say any more?

Mr. STEVENS: Your Honor, I would like to touch upon the—I know that it is late——

The COURT: No, no. You see, we have had quite a day of it here since two o'clock. Suppose you emphasize your points.

Mr. STEVENS: I would emphasize briefly this, your Honor, that when pressed this afternoon for the real import of the argument that the sale of color press meant NEA's entrance into the conspiracy with Greater Buffalo, Mr. Bernstein referred to Exhibits 27 and 28. The first is the document between 1836 Buffalo Color Press, NEA's subsidiary, dated in October of 1955, by virtue of which the assets of Color Press were sold, and he said those assets were insignificant and Color Press' position in the business was insignificant, indeed, it was only one of several printers whom NEA used, including Greater Buffalo. But in that document, your Honor, he apparently with subjective conviction, asserts that we have forever committed

Greater Buffalo to pay a commission on the printing business and that is what was turned over to Greater Buffalo, printing business, no matter whether NEA or United Press, United Features, or anyone of the other companies who placed that business initially with Color Press, continued to have it. There is not a word in the contract to that effect. Nothing in the contract requires that interpretation. Surely before an illegal interpretation could be placed upon a written contract, 1837 there must be proof of the actual employment of the contract for that purpose.

Now, your Honor, with reference to Exhibit 28, which is the contemporaneous contract between NEA and Greater Buffalo, there again there are provisions for payment to NEA for what I call its sales services. These color comic supplement contracts, your Honor must be sold just as a household product must be sold, and you don't always keep a sale, keep a satisfied customer unless you go back and service the account.

The COURT: Do you have any proof of that in the case?

Mr. STEVENS: The proof your Honor, is that this is new business placed by NEA with the printer. When we say "placed by NEA with the printer," that means NEA employs the printer to do the printing for it. In other words, Greater Buffalo sell the printing to NEA, it doesn't sell it to the papers who are customers of NEA's. Your Honor, at this stage 1838 of the case, not having affirmative proof from our side, again we must turn to the contract itself, and unless that contract literally compels the illegal connotation and interpretation upon which Mr. Bernstein insists, I respectfully submit that the contract must be read as applying to business which we place with Greater Buffalo for printing, and which we retain as our printing. In other words, if one of our contracts were taken over by Hearst, and it placed it with Greater Buffalo, we would expect no commission, we would get no commission.

The COURT: I have your point.

Mr. STEVENS: One other point I would like to make——

The COURT: I am not going to close out, I am sure Mr. Bernstein wants to have rebuttal and I am sure there may be surrebuttal by Mr. Raichle, possibly, and I am not closing the door. I sent a note home that I shall not be home 1839 for a while. We will take a short recess.

(Thereupon the court was in recess at 5:30 p.m.)

PROCEEDINGS RESUMED PURSUANT TO RECESS, COMMENCING AT
5:45 P.M.

The COURT: Mr. Stevens?

Mr. STEVENS: At the recess I had just talked about the contract relating to the sale of Color Press and NEA's sales agreement with Greater Buffalo. I would like to add that if your Honor searches the complaint from caption to jurat, he will not find any reference to Buffalo Color Press in that complaint.

In other words, it is akin to what your Honor said in questioning Mr. Bernstein. He said, 'We make no question about the propriety of the sale.' You said, 'You are trying to enmesh

NEA in this case with it.' That is precisely what is 1840 happening. I respectfully submit that when your

Honor reads the contracts and comments in our written brief upon them he will see that these are straightforward business agreements. As a matter of fact, in the contract for the sale of assets of Color Press there isn't even a covenant not to compete, which is certainly one of the most ordinary covenants one would expect in the sale of a business.

With reference, briefly, to what has been called the Beverly truce; that agreement so far as it is indicated in the record, existed solely between NEA and Hearst. Hearst's participation in it, according to page 346 of the record, was only one or two instances. Mr. Feldman, who conducted the inquiry, said to Mr. Nicht, "When you say some instances, does that mean that you recall one or two cases where King did not go out and actively solicit a newspaper account being serviced by NEA?"

The answer was, "That's right." In other words, the 1841 maximum compliance with that so-called truce, which both Greater Buffalo and NEA have pointed out means a temporary cessation of hostilities in one or two instances, the maximum adherence to that so-called truce by NEA would extend no further than May of 1957.

The Government may well contend, it has in its brief, that certain other acts showed a compliance. The truth of it is that the documents mentioned by the Government do not show such compliance, but indeed show, first of all, that there was serious competition between NEA and King Features and, furthermore, illustrate a situation which existed under the contracts, which are in evidence in this case, which gave Hearst an ad-

vantage price-wise on the printing of color comic supplements up to approximately a run of 100,000. I am referring particularly to Plaintiff's Exhibits P-41 and P-42. Your Honor will recall that there was some discussion at the trial concerning a letter from Mr. Anderson to Mr. Kenneth Koessler, dated March 4, 1960, referring to a ten-page standard section of the Sioux City, Iowa Journal and there is a reference to the fact that King Features was undertaking to obtain this business—either in that letter or in P-43—yes, it is in P-42. Now, this letter shows on its face the existence in 1960 of sharp competition between NEA and King. The letter, P-43, dated March 15, 1960, refers to a Sioux Falls. Now, I thought myself, from looking at the documents for some time, Sioux Falls and Sioux City were probably the same, and didn't really pay any attention to it. The fact is that Sioux City, Iowa is at the confluence of the Big Sioux River and the Missouri River, I believe in the northwest corner of Iowa; and Sioux Falls is some sixty or seventy miles up the river in South Dakota. In this letter of March 15, 1960, Plaintiff's Exhibit P-43, there is the statement that "Fargo and Sioux Falls go together as I understand it, and the combined circulation is in excess of 100,000." Now, the import of that statement is not anything conspiratorial, it doesn't connote or indicate a wrongful agreement. It states the fact that under the arrangements which NEA has with Greater Buffalo, its printing costs, your Honor, for an eight-page standard section include two elements, just as a public utility rate often has two steps, ready to serve charge and a consumption charge, this has a make ready charge of \$216 and a charge per thousand for printing of \$9.49. If one looks at the King contracts, which are represented by P-2 through P-6, he will see that the rate for printing by International Printing Company to Hearst is a combined rate in one figure and up to as many as ten million sections of fours, not eights, the price is \$5.34 $\frac{3}{10}$. It is too late to push the mathematics of it, but when one does he will find that at about 100,000—actually, somewhat above 100,000 per run, the rate with a flat make ready charge and a charge per thousand of printing, which NEA enjoyed, permitted it to have a slightly beneficial rate for printing as against that enjoyed by King. Below that it was otherwise. So that when Mr. Koessler said that he understands Sioux Falls, that is, Sioux Falls, South Dakota and Fargo, North Dakota go to-

gether, he is talking about the fact that they have a ready print which can be printed as a single run, with mere inserts to change the name of the paper, the banner as they call it. So that there is an actual economic explanation for that letter. Instead of showing anything like adherence to a conspiracy, it shows the intensity of competition existing between Hearst and NEA, and the fact that Mr. Koessler was naturally fully cognizant of the possibility of NEA's competing on an equal footing when it got to a point where the total run on a given color comic section was somewhat in excess of 100,000. The upshot of the Beverly truce, your Honor, is that it was insignificantly adhered to, if at all, by—

The COURT: That is the hotel?

Mr. STEVENS: That is the hotel meeting, that is the Beverly meeting—that if it was adhered to at all, it was only on one or two occasions, by the record, by Hearst, on no more than three instances over a period definitely terminating in May of 1957, sharp competition shown between NEA and Hearst after that, and no evidence in the record in this equity case showing persistent adherence to it.

Finally, on that subject, it is not the subject of a separate charge in this complaint. It is charged only as an integral part, a means of our purportedly entering supposed prior existing conspiracy between Hearst and King.

Finally, on this sequence in developing our argument, there really is no proof in this record of the size and extent of the business done by NEA. Mr. Bernstein admitted it was a contest on the subject. The exhibits I think, are 60, 61 and 62, and are exhibits which were identified only in the proceedings for the temporary injunction, to which NEA was not a party, and while we stipulated that Mr. Hamlin's summary of Mr. Gorman's survey was accurate, we didn't stipulate that Mr. Gorman's survey was accurate, but merely said that Mr. Hamlin did an orderly job when he summarized what was recorded in there.

So there is no proof, except the admission today that our position in the industry was insignificant.

The COURT: Let me ask you this. Do we treat this thing today as a motion for a non-suit? I know we have the problem of Nicht's memoranda, and so forth. I haven't really gotten to it thus far. Do we all treat this as a motion for a non-suit?

Mr. BERNSTEIN: As I understood your Honor's remarks at the close of the evidence, the Government cannot get Nicht's documents in unless it shows that it has made a prima facie case of conspiracy. If it convinces the Court that it has made a prima facie case of conspiracy and the documents are received, then the defendants have the opportunity to argue that even with the additional documents the case should be dismissed.

The COURT: Well, basically, it is a motion for a non-suit.

Mr. BERNSTEIN: I would say that the same issue is involved.

Mr. STEVENS: Yes.

The COURT: Thank you.

Mr. STEVENS: Your Honor inquired during Mr. Raichle's argument as to what he conceived to be the genesis of this case, at least as I understood your Honor's inquiry—

The COURT: Well, you know I come in here just about the time this case came in here and I was confronted by certain remarkable behavior. I never quite knew, really—it has nothing to do with it when I started talking about Senator Sparkman, after all he has nothing to do with this case, except you are provoked by things like that, you like to learn, it may be just curiosity. I thought maybe I could finally run it to the ground. It has nothing to do with the law suit.

Mr. STEVENS: I don't think my remarks would be any more than speculation, so I will not make them. I do want to—

The COURT: Do you want to make them? It might be enlightening. As I say, early, when I first came aboard, this was one of my first cases, and suddenly the image changed, and everyone wonders why images change, I wondered, and I have always wondered, and today I thought maybe I would probe at that a bit. Do you want to comment?

Mr. STEVENS: I think the genesis of this case, as I have observed it, is that a former Hearst employee, a man named Jack Hornady, who operates a color printing company, as I understand it, in Virginia, complained to the Government, and he is as much a complaining witness as you and I have known in the garden variety grand jury proceedings, which we have all participated in, and that one of his bete noires was Frank Nicht, and because of his dissatisfaction with Nicht and his knowledge of the inner workings of the Hearst organization which he had, and indeed the young lady who was here and testified in an

effort to bring about the admissibility of the so-called Nicht documents, said that she had worked for Mr. Hornady, and I believe your Honor will find that it was Hornady's complaint, it was Hornady's knowledge of the workings of the Hearst organization, his knowledge of its weaknesses, his knowledge of its greediness, his knowledge of its efforts to dominate, which was the background for this entire proceeding, and that is how we got where we are. I further think, your Honor, from the observations that I have made, that the palpable shift in the position which the Government is taking in the course of this case comes from the fact that having started on what it initially assumed or acted as though it had a basis for criminal proceeding, having changed its mind and fled a civil case it later found that it was treading on very important political toes who yelled "ouch" loudly, and that it was hurting Hearst, and Hearst went to it and yelled for help. I think that is the fact of the case and that is how we are here today, and as Mr. Bernstein said, Hearst went to them and said, "Just tell us what it takes to get out, we'll take it." Apparently, Hearst was willing to pay the price. We, on behalf of NEA, as such a small factor in the business, were more eager than anybody else to be spared the burden of this trial, but when we saw what Hearst was willing to swallow, we couldn't do it, we would not do it. We didn't feel we were guilty then, we do not feel we are guilty now, and we respectfully submit that the Government has wholly failed to adduce that kind of proof which at this point of the case entitles them to hold NEA in. We respectfully request that when your Honor has had an opportunity to consider this argument, these arguments, to study the briefs and the documents, that NEA should be dismissed on these charges under Sections 1 and 2.

The COURT: Well, I never demanded it, but I often wondered what somebody's version of it all was. Thank you. Now, Mr. Bernstein?

Mr. BERNSTEIN: The main thrust of the argument of Greater Buffalo and NEA is that the conspiracy does not exist today, there is competition today, and since the Government's main case is that they agreed to eliminate competition, it has no case, it shouldn't be here. Unfortunately, I think that argument prejudices the Government because we are in this posture purely as the result of mechanics. Had no efforts been made—

The COURT: Pardon me, where is the competition today? You said there is competition, where is it?

Mr. BERNSTEIN: The point is this; this is really to answer that argument, to answer that argument if it has any merit. The Government cannot conceive——

The COURT: It's in equity, I think I should know.

Mr. BERNSTEIN: That is correct. The Government contends that Greater Buffalo is in this position that it is today as a result of the arrangement it made with King way back then. Let's assume arguendo, without conceding——

The COURT: Didn't you say there is competition today?

Mr. BERNSTEIN: I didn't say that, I don't want to concede that.

The COURT: I thought you said there is competition.

Mr. BERNSTEIN: I said assuming, arguendo; assuming for the purpose of argument that there is competition today, assuming that Greater Buffalo dominates the printing industry and that there is competition between Greater Buffalo, King and NEA for customers, assuming they no longer allocate customers, assuming that is the situation today; this Court has the equitable power because Greater Buffalo achieved that position as a result of an illegal agreement, this Court has the equitable power to say, 'I'm going to provide the opportunity for competition that existed between King and Greater Buffalo in 1955; today.' What was that position?

At the time Greater Buffalo acquired International, just immediately at that time, King was in a bind. King either had to sweeten the pot as far as International was concerned, pay it more for printing, or King had to do the printing itself, or King had to induce some other color printer to come over to International's plant and operate it. If it had done that then without an agreement with Greater Buffalo not to compete, then Greater Buffalo would not have been in the position to get International. The Court has the power to do that today by an injunction against Greater Buffalo doing any printing for King or NEA as a customer. Greater Buffalo is permitted to print—could be permitted to print for the newspapers, but if King wants to get the business as a printer, if NEA wants to get the business as a printer, they have to go out and get their other printing establishments and make other arrangements to compete. At the same time——

The COURT: Who would be the beneficiary if that were so?

Mr. BERNSTEIN: If the Court at the same time required within a certain specified time Greater Buffalo would have to sell International, Sylacauga and Lufkin, and if it isn't sold within that time then it could no longer print for King or NEA; King or NEA would have to go around and either operate it themselves or get another printer or get out of the business of printing, which it isn't doing now anyway. The public would be the beneficiary, the newspapers would be the beneficiary.

The COURT: You said King is not a party here any more.

Mr. BERNSTEIN: King is a party for the purpose of relief. There is a provision——

The COURT: King made a separate decree here. You said to tell King to get out or something——

1856 Mr. BERNSTEIN: The Court has the power——

The COURT: I understand all that, but King isn't here to speak up in answer to what you say.

Mr. BERNSTEIN: The reason for that, your Honor, is that the Court provided that hearings on relief would not be done at this session. At the session where the Court would consider in depth and in detail the hearing on relief, the judgment of this Court provides that King then has the opportunity to come in to be heard and defend or refute any one of the remarks that I made. The Court has given King that power, that opportunity.

The COURT: I hadn't realized that. You say that I have the power to bring them in under a decree——

Mr. BERNSTEIN: Well, the Court has the power to prohibit Greater Buffalo——

The COURT: I'm treating this as an ordinary law suit, with King out, and you are asking equitable relief.

1857 Mr. BERNSTEIN: It isn't that kind of law suit. The Court would not accept the judgment against King, let King out, unless there was a provision in it that King had the opportunity to come in and be heard with respect to any prohibitions that the Court would impose against Greater Buffalo. If the Court sees fit to impose a prohibition against Greater Buffalo printing for King as a customer—it can print for the newspapers—if it prohibits Greater Buffalo from printing for King as a customer and at the same time orders within a specified time Wilkes Barre and Lufkin and Sylacauga be sold, then King has the option of purchasing those plants and operating in competition with Greater Buffalo or getting out of the print-

ing business, and King has the opportunity to be heard before this Court because this Court has provided in its judgment that

1858 King will have the opportunity to come in and be heard on such a purpose. It is unfortunate that we get into relief at this time. The way the case was developed, the first issue to be decided was whether there was a violation of Section 1 and 2 of the Sherman Act, then was there a tie-in by NEA. We don't have to litigate that with King, King has given us the relief as against the tie-ins, and then the question of relief for the Court, and that time King would have the opportunity to appear before this Court and be heard with respect to any one of those provisions.

The Government has been charged with favoritism—

The COURT: Now, Mr. Bernstein, you are talking about relief here. I am glad to hear the balance of your argument, of course, but I hadn't thought about what you are talking about. You are talking about alternative relief?

Mr. BERNSTEIN: What I am saying, your Honor—

1858 The COURT: Assuming that somebody finds you are right?

Mr. BERNSTEIN: That is correct.

The COURT: Finish off your main argument. You are talking about alternative relief, assuming I found the Government should prevail?

Mr. BERNSTEIN: That is correct. It isn't necessarily alternative relief because at the same time that the Court would order the divestiture, it provides the equity of not permitting the culprits, King and NEA, to profit by it, it provides the opportunity to put them in a position where they were when King made the illegal agreement.

The COURT: Go back to your main argument.

Mr. BERNSTEIN: Would your Honor care to hear my explanation concerning Senator Sparkman?

The COURT: No. Look, Senator Sparkman was just a name in the wind. He seemed to change the hue. The wind was blowing from the east, it changed to the west; or from the north to the south. I have often wondered, but I care less.

1860 Mr. BERNSTEIN: I would like to shed light on the genesis of the case.

The COURT: I don't care, that was a long time ago and far away.

Mr. BERNSTEIN: All right, your Honor. I don't want the record to show that I am unwilling to refute the remarks of defense counsel, and suffice to say for this point that I categorically deny charges that were made of favoritism or improper activity. At an appropriate time this will be presented. Right now I would like to get back to the main substance of the argument, because I think an important point that Greater Buffalo has made, and challenged counsel to deny, is that there is not a scintilla of evidence in this record to show that King had anything to do with acquisition of International. Apparently counsel was referring to the fact one of the documents under advisement, the Nicht memoranda, would establish that 1861 King took credit for the International sale, that Nicht said that. That is not in evidence in this case at the moment, that is under advisement. What is in evidence in this case? Koessler's own letters, P-15 and P-16. The first thing that I would like to invite your Honor's attention to with respect to these exhibits—and you have examined them before—is the form. Note that it is signed formally by J. W. Koessler, President. Note that he refers to points discussed on which we agreed, we agreed, we agreed could go into a contract. Mr. Raichle seems to make some distinction between an illegal agreement and a written contract. It is clear from this document that Koessler was trying to persuade Nicht that an agreement had already been reached on these points. What was the first agreement reached with respect to Paragraph 1, it says, "Greater Buffalo will purchase International Color Printing."

If King had nothing to do with that transaction why did 1862 Koessler have to give him that assurance that Greater Buffalo would purchase International Color Printing. What business was it of Nicht's if this was a private transaction between the family in Wilkes-Barre and Mr. Koessler. No, this was an agreement, he said, "We agree that Greater Buffalo will purchase International." And in that same sentence Greater Buffalo agreed that Greater Buffalo would assume a printing contract which is presently being negotiated between International Printing Company and King Features. This makes it clear that at the same time Nicht was negotiating a ten-year contract with International, was sweetening the pot, provided for an escalation clause. Mr. Raichle says, "Wait a minute, this acquisition was consummated in June of 1955——" June 25th,

I believe, Greater Buffalo acquired International—it was not until July 30th—he said August 19th, it was some such later date. I submit to your Honor Exhibit P-23 in evidence, the contract between Nicht and International. Greater Buffalo would have us believe since that is dated August 19th and it says, "Attached are three signed copies of an agreement dated July 30th", that therefore the agreement between King and International, that Nicht was talking about on June 2nd, hadn't been executed until after the acquisition of International.

Now, we get to a curious point, we find that as Exhibit A to this July 30th agreement is a rate schedule that followed page 4—after the signatures on page 4 there is an exhibit A, that is the rate schedule, that is the meat of the agreement. Note the date on that, June 16, 1955. June 16th, this is before the acquisition, and the first page of Exhibit 23, the second paragraph, makes that clear. It makes it clear that the agreement on the rate was entered into June 16th, because the second paragraph of the letter says: "I would like to point out that in Section 'A' of Article 7, Exhibit 'A', is referred to as being dated June 16th—", then it talks about the rates that went on subsequent to that. The Government's point is that it was all one transaction. As Mr. Koessler indicated in his June 2nd letter, Exhibit P-15, where the first paragraph is that Greater Buffalo will purchase International and it will assume a contract between International and King. It is all one transaction. Now then, it says: "(2) In a contract which King Features Syndicate will negotiate with Greater Buffalo Press, Inc., the contracts and business which each company presently hold, will continue to be held by the same parties."

The COURT: Wait a minute, that is Nicht's letter signed by Gorman?

Mr. BERNSTEIN: P-15, your Honor. I confused your Honor. P-23 is Gorman's letter to Nicht, but note the date, August 19, 1955, that is after Greater Buffalo had acquired International, so that Gorman at that time was an agent of Greater Buffalo, and he is referring to a contract that was dated June 16th, that is, the rates were determined on June 16th. Now, referring back to P-15, Koessler's letter to Nicht, in the first paragraph he said: "Greater Buffalo Press, Inc., will purchase International Color Printing Company, and

assume a printing contract which is presently being negotiated—" the point is this, that was all taking place at one time.

The COURT: I see your point.

Mr. BERNSTEIN: The next important point that Mr. Raichle makes is that this was an aborted arrangement, Nicht wanted it but he never got it. P-16 is the same type of letter that your

Honor just read, it is dated June 13th, a week later. It is 1866 pretty much the same form. It shows there was a progressive set of negotiations and dealings, they were bargaining back and forth. Mr. Koessler says to Mr. Nicht: "Dear Frank: These are the provisions on which we are in agreement, and which should be included in a contract—". Now, if your Honor will note P-16, the second page, the form there; this is a precise arrangement, it isn't some loose talk, it's got prices listed, careful language there, and on page 3 it's got a detailed schedule. It is kind of a formal document, it isn't some haphazard note or introspective musings. On page 4, paragraph 9, Koessler says that one of the terms upon which they agree—and this is an illegal agreement—it was nonetheless written—"For the period of this contract, the Greater Buffalo Press, Inc.

will contract to print newspaper supplements only for 1867 such accounts as it presently holds, and for such new accounts as it is privileged to negotiate in contract under this agreement, and for King Features Syndicate."

Now, Koessler admits that agreement was in effect. Now, the thrust of the argument then is because this was not put into a formal contract it really aborted, it didn't work out, but the Government's position is that it aborted after the conspiracy to monopolize for Greater Buffalo had been accomplished by Greater Buffalo's acquisition of International.

Let's look at P-16. The first paragraph, that was carried out. The first paragraph was that Greater Buffalo will purchase International, that was accomplished; and we'll assume a printing contract which is being negotiated, that was accomplished. The next paragraph is that Greater Buffalo Press and King will continue to hold such contracts as they presently have. Then, if you recall, Mr. Stevens read a letter 1868 dated January 26, 1956, P-40 in evidence. In January 26, 1956, Koessler reiterates to Nicht in the last paragraph: "It can be worked out however, under the idea on which we are cooperating, namely, each of us to hold what we have and to share with King any new business which is obtainable."

So that agreement to share business with King was still in effect after NEA was brought into the picture. The only reason that——

The COURT: I'm pondering over some of the sentences. I'm listening to you.

Mr. BERNSTEIN: There is a——

The COURT: This is almost cryptographic, I mean the one of January 26th that you handed me.

Mr. BERNSTEIN: On P-17, your Honor, P-17 is a letter from Koessler to Nicht, also on January 17th——

The COURT: You handed me this one here. You hadn't finished that, P-40?

Mr. BERNSTEIN: Yes. P-17 shows it even clearer at 1869 about the same time, it's less cryptic, dated January 17, 1956, from Koessler to Nicht, and note in the first paragraph he says: "I am returning second draft of the proposed contract."

Now, it got to the point of a draft of a contract. In the next paragraph he said: "The only thing I have changed is the exclusive commitments on the part of both parties." That would indicate that P-16, which Your Honor has before him——

The COURT: Yes.

Mr. BERNSTEIN: That would indicate that all of the terms and conditions of P-16 were still in effect. He said, "The only thing I have changed is the exclusive commitments on the part of both parties." In other words, he is saying that no longer will Greater Buffalo be the exclusive printer for King, nor is King obliged to put all of its printing in Greater Buffalo, but, obviously, because between January 17, 1956 and 1870 June 13, 1955 [sic], Koessler had forgotten what he wanted, he got International, and furthermore, he had made an arrangement with NEA, he was going to get all of NEA's business.

The COURT: You said he got what he wanted. As I understand it, this is a limping company in a limping community, owned by a limping family. Why couldn't he have grabbed that without any argument whatever?

Mr. BERNSTEIN: The first reason why he couldn't have grabbed it was Section 7 of the Clayton Act which prohibited it, it was illegal——

The COURT: He could have another printing plant?

Mr. BERNSTEIN: Section 7 says no corporation——

The COURT: Wait a minute, Koessler is a printer, he can have a printing plant anywhere he wishes in the country?

Mr. BERNSTEIN: If he establishes it himself, yes. If he does it by buying out a competitor, the result of that——

The COURT: It's a printing plant, he is a printer?

1871 Mr. BERNSTEIN: He is a competitor of——

The COURT: He is a printer. Isn't he a printer?

Mr. BERNSTEIN: Yes, he is a printer.

The COURT: He can buy a hundred plants if he wishes?

Mr. BERNSTEIN: No, that isn't right. He can't buy one hundred plants if in so doing he substantially lessens competition.

The COURT: Wilkes-Barre is an old coal mining town, as I understand it, a hilly section, which is long past as a prosperous area in our times. Now, there is a place down there called International Printing Company, it is not too far from Buffalo. Do you mean to tell me if a man named Koessler wanted to buy something in Wilkes-Barre, and he is a printer, and let's say he made a success of his own printing business, do you mean he couldn't buy that without running afoul of the federal laws?

Mr. BERNSTEIN: I say yes, and do you know why, Your Honor?

The COURT: You say he couldn't?

1872 Mr. BERNSTEIN: He could not under the circumstances of this case.

The COURT: You mean surrounding him with all the intrigue you put it around it?

Mr. BERNSTEIN: No, no, no.

The COURT: I thought he could have whatever he wished.

Mr. BERNSTEIN: The only thing of value in that plant that you have just described, Your Honor, was King's business, eight million dollars' worth of business, that was what was of value.

The COURT: I have your point, I understand that, but I say there is nothing wrong per se——

Mr. BERNSTEIN: There is nothing wrong——

The COURT: —in Koessler, who I understand historically started in here with nothing, and because he can make something work that nobody else can, made a success. I know Koessler's history. I was a young lawyer and Koessler started out running a law publishing firm, he was looking for business

out of the lawyers back in the depression, I remember that, The International Law Journal, the International Gazette, and he had a competitor of great magnitude, The Daily Law Journal. It was a constant fight back in those depression days to get the foreclosure publication. I remember this, I went through this tour. What I am trying to say is that somewhere along the way this man got off the ground, began to make an excellent printing press. How he got in the color business, I don't know, but he was away and winging. You tell me he can't buy something in Wilkes-Barre that was on its knees, faltering—

Mr. BERNSTEIN: Your Honor has taken that as an isolated fact.

The COURT: And you are surrounding it by a great intrigue of a conspiracy, I know that.

Mr. BERNSTEIN: That is what makes the difference. Greater Buffalo was permitted to do that, and the objective of the Government is in this law suit is to provide that climate to let him do all the printing he wants to do, fairly, competitively, but not to retain what he has achieved solely by relationship with this illegal agreement with King, that is the whole point.

The COURT: I understand that. I asked you the blunt question, whether a man who came up by his boot straps couldn't, in due course, acquire other places.

Mr. BERNSTEIN: He should, and we encourage it, we like to see it done. It is only when he does it illegally through this intrigue—

The COURT: I understand your point. It is getting late. I am glad to hear you, but—

Mr. BERNSTEIN: I have to answer some of NEA's assertions. I will do it briefly, in a nutshell.

In a nutshell, the offense that NEA has committed, is when it met in the Hotel Beverly with Nicht and it agreed not to compete for Nicht's customers, and the documents in evidence show that NEA adhered to that agreement, as late as 1957 it adhered to that agreement. In the Consolidated Laundry case cited in our brief, the argument was made there was only about \$400,000 worth of interstate commerce involved, therefore it was de minimis. The Court held, no, when you reach an illegal agreement with your competitor—in this case it was for over a million dollars' worth of business—

when you agree not to compete with them, that is a violation of the law.

The Government invites the Court to focus its attention on that agreement. That was the illegal act, that was the illegal act. The reason the Government brings in Buffalo Color Press and all these other details—there is only one reason for it—it is to show what NEA's intent was at that time, because the Government has to prove two things; it has to prove that NEA

knew that there was a conspiracy between King and 1876 Greater Buffalo when it made the agreement not to compete with King, and it also has to prove that NEA had the intent that Greater Buffalo monopolized the printing, and that with NEA and King, the three of them would monopolize the sale. In order to show that intent we bring in the Buffalo Color Press incident because the terms in the Buffalo Color Press contract show that—and the contract speaks for itself, it isn't my interpretation or anyone else's, P-27 and P-28 stand on their own faces, those documents show that—

Mr. RAICHLE: Stand on their own faces?

Mr. BERNSTEIN: I misspoke, your Honor. On the face of P-27 and P-28, on the face of the documents, it is clear and unambiguous from the language that Greater Buffalo agreed that as long as it was doing printing for any of the designated customers or any customer that NEA brought in to it, it was going to remunerate NEA and it was going to charge the 1877 newspapers the same rate it was charging anybody else.

Now, the Government says that those details under which it sold Color Press to Greater Buffalo showed that it had an intention that Greater Buffalo would monopolize the printing, and that when it made its deal with King is was not just a lawful, normal arrangement of a plant going out of business and saying, "I don't want to print any more, who is going to print for me? World Color, will you print for me, World Color, will you now be my printer? Acme, will you be my printer? Eastern, will you now be my printer?" No, he congratulated Greater Buffalo for being now the largest printer by its acquisition of International, and "we are going to join the bandwagon, we want to talk to you about this new setup." The first conversation that we have in the record is this conversation with Nicht agreeing with him not to taken any of his customers away, and that arrangement was arranged 1878 through Koessler's invitation.

If I have not specifically refuted any of the points

made before, it is only in the interest of time, and not because I wish to concede by my silence those points are correct. That is all I have.

The COURT: One thing I wanted to say to you; at the beginning of your argument you suggested, because of my comments, some statements about Senator Sparkman, which is, as I told you, long ago and far away and of no particular interest to me in resolving this, no interest at all in resolving this question. But I didn't want to shut you off if you had something to tell me about it.

Mr. BERNSTEIN: Yes, your Honor, you indicated before that you wanted—

The COURT: I told you, and I will repeat again, one of the first cases that I had was this case, and there was a certain hue to it as far as the Government was concerned, as I 1879 saw it.

Mr. BERNSTEIN: A hue in what way, your Honor?

The COURT: A hue of aggressiveness against everyone concerned, including Hearst.

Mr. BERNSTEIN: That still persists, as far as—

The COURT: Just a minute. There was an adjournment after the first beginning of things, and then the tide seemed to change and it was obvious to me that the Department of Justice had had a slight change. Now, if you don't know anything about that—

Mr. BERNSTEIN: The only thing I do know about it—

The COURT: The Sparkman thing was scuttlebutt, go ahead.

Mr. BERNSTEIN: The only thing that I can tell you from my personal knowledge as to Senator Sparkman is, at the same time that Greater Buffalo's counsel was importuning the Department of Justice to join in the request to the Court to lift the injunction, at that very same time, in some of the same meetings, representatives of Senator Sparkman's office 1880 were importuning me to achieve the same purpose and stating—Senator Sparkman's representatives stated his interest in the case was to provide jobs in Sylacauga, Alabama, and to restore to the people in Sylacauga the opportunity to make—to get a return on their investment that they had contributed toward the opening of the plant. That is the only thing that I have personal knowledge of and can shed light on with respect to that.

The COURT: Well, I never understood it, I shall never understand it. I didn't realize you were in charge. Your advocate came down here with respect to a position of Hearst. I can't remember, it was some years ago. But there wasn't any question at all that the hue changed, I can't say with accuracy, but the image changed, Mr. Bernstein, with respect to the Government's position, and I never understood it. Well, that has nothing to do with the merits.

1881 Mr. BERNSTEIN: I'll say this, your Honor. Your Honor lifted the injunction——

The COURT: That is long after the situation I'm talking about.

Mr. RAICHLE: Relaxed the injunction.

The COURT: This is the time when your people first came aboard and presented what I thought was a fairly tight picture and, as far as Hearst was concerned, the picture lessened the next week.

Mr. BERNSTEIN: Well,——

The COURT: The next hearing. I never understood that.

Mr. BERNSTEIN: I can't shed light on that.

The COURT: I'm sure you couldn't. I don't think you were there at that time in that particular area. You may have been. That has nothing to do with the merits.

Mr. BERNSTEIN: Now, as far as procedure, unless there is something else——

Mr. RAICHLE: I have just one thing. I went through this accurately, and without argument or unduly prolonging
1882 the hour, in view of counsel's position and particularly in view of his reluctance to assert there has been and continues to be competition between King and Greater Buffalo Press, I now move, your Honor, as sincerely as I know how, earnestly is perhaps a better word, to dissolve the temporary injunction restraining Greater Buffalo Press from transferring runs of Hearst's from International Color Printing Company to Sylacauga. The claim has always been, under oath and otherwise, by these gentlemen representing the Government, that the competition between Greater Buffalo Press and Hearst was such that Hearst was at a disadvantage, and that Greater Buffalo Press could take Hearst's customers in the absence of that injunction. Now, they have abandoned that position through lack of meeting the issue squarely. These are important rights

involved here and I respectfully submit to the Court that in light of what has been said today, what has been developed in the course of these hearings, that injunction should be dissolved.

The COURT: I am sure you would not expect me to decide your motion immediately. I will take that under advisement.

Mr. RAICHLE: Very well, your Honor.

The COURT: On the record, let us decide, gentlemen, exactly what is before me among the litigants. You make a statement of what is before me.

Mr. BERNSTEIN: There is initially before you, your Honor, Government's motion that documents 33 through 39 and documents 44 through 51, which were received against NEA only, now be received against Greater Buffalo on the grounds that the Government has established Greater Buffalo and NEA had been engaged in a conspiracy to allocate customers, and the conspiracy charged in the complaint, and that having established that conspiracy by evidence outside of these documents, these documents should now be received as against Greater Buffalo.

The COURT: What is the horizon that you claim that you have made wherein there is a conspiracy between NEA and Greater Buffalo Press, wherein the admissions or communications of one co-conspirator can be used against the other? Tell me that.

Mr. BERNSTEIN: In a nutshell, there are NEA documents in evidence which say that: "Because of our agreement with King and Greater Buffalo we cannot solicit your business." They say to the newspapers, "We padded the price to the newspapers because of our arrangement with Greater Buffalo, we have padded the price because we can't compete with King." And Nicht's testimony that he met in the Beverly Hotel at Koessler's arrangement and invitation and agreed with NEA that they would allocate each other's customers.

The COURT: All right.

Mr. BERNSTEIN: Exhibits 64 and 15 through 18 were received against Greater Buffalo only. These were documents written by Koessler, and so on, and the Government now moves that they also be received against NEA on the same grounds that the conspiracy has been made out.

The Court has under advisement documents 10 through 14, 19 through 22, 24 through 26, 55 through 57, 61 through 63, 65

and 66 through 68. Most of these documents were the Nicht memoranda or Koessler memoranda.

The COURT: I remember that, yes.

Mr. BERNSTEIN: And the Government asks these documents now be received against all parties on the ground that the prima facie conspiracy has been made out.

The COURT: Give me the grounds again why you think they are proper.

Mr. BERNSTEIN: Well, I think that——

The COURT: You say they are memorandum made in the usual course of business?

Mr. BERNSTEIN: They were, yes, definitely.

The COURT: I'm not being an advocate, you say those 1886 were part of his business files?

Mr. BERNSTEIN: Part of his business files, made contemporaneously with the transaction, and furthermore Judge Ryan held in the ICI case, cited in our brief, and Judge Leahy held in the DuPont case, cited in our brief, that anti-trust cases——

The COURT: Now, you say partly under the business——

Mr. BERNSTEIN: No, no.

The COURT: Record law.

Mr. BERNSTEIN: No, your Honor ruled on that. For the record, I contend they are also admissible under the business record statute. Your Honor ruled, and I am not going to reargue that. These are admissible under a special exemption to the hearsay rule, which provides where a prima facie conspiracy has been established by independent evidence outside of the agreement, and I have tried to confine all of my remarks at the chart board to——

The COURT: Supposing they go to conversations, for 1887 example, allegedly between Koessler and himself. Koessler and I have talked, we can't agree, but Koessler wants to go one way and clean up the west, I want to have the east; now, how would you like to be confronted with that?

Mr. BERNSTEIN: They do more than that.

The COURT: How would you like to be confronted with something like that as against you or Koessler?

Mr. BERNSTEIN: In the first place, they were confronted with that when Nicht's testimony was taken, and they deliberately——

The COURT: Tell me what Sylvester Ryan said now, I'm sorry I cut you off, what did he say?

Mr. BERNSTEIN: Judge Ryan said that when an antitrust conspiracy is involved, and this involves corporations and this involves people who have to deal with other members of the corporation, when they make records to memorialize what has occurred, to make records of what arrangements they have orally made with other people——

1888 The COURT: Wasn't this a regular course of conduct, like a diary, a business transaction?

Mr. BERNSTEIN: These are official memoranda to superiors——

The COURT: Here is a man that makes notes of whatever he thinks. I remember some remark at the last hearing, "What a difficult fellow he is," or words to that effect.

Mr. BERNSTEIN: That is one that is deliberately picked out, and I respectfully submit to your Honor that if your Honor will examine each one of those Nicht memoranda under advisement, from the language and the wording and the circumstances, you will see that these are the type——

The COURT: It seems unfair to me. I mean, that may be a naive way to put it. You say once it is established, the musings of one could be used against the other.

Mr. BERNSTEIN: These are not musings.

The COURT: They were found on his desk, unsorted things.

1889 Mr. BERNSTEIN: No, they were not. If your Honor will examine——

The COURT: The woman that was here said that he had these things in his desk at random.

Mr. BERNSTEIN: No, not at random. If your Honor will inspect the documents and the contents of the documents you will see these are formal, official reports, and as Judge Ryan said in the ICI case, the general rule of conspiracy is that——

The COURT: I know that, I know that well. I know you can't begin these things, I know you have to have the conspiracy, if it's part and parcel of the continuance.

Mr. BERNSTEIN: I am not arguing that, I am saying the general rule is it must be in furtherance of the conspiracy. Everybody would ask the question, how does this memoranda further the conspiracy, why is that in furtherance of the conspiracy? Judge Ryan's point was if it relates to the transac-

tion, if it relates to the transaction and if it used to show
 1890 the intent and purpose of the parties to it, as part of a corporate enterprise to report to superiors, and Nicht made these memoranda for his own records so that—maybe he used peculiar form, "Why does he do that and why does he do this", the purpose of the memoranda is clear from the secretary's testimony, it was to remind himself the following day, so it did further the conspiracy because it assisted him in his further dealings—

The COURT: Fine. I will pass on that. Thank you.

Mr. BERNSTEIN: I think I completed a recital of all the documents under advisement. There are two documents, there is Exhibit 9 that doesn't fall in that category. We withdraw Exhibit 9 at this time. There is one other document that doesn't fall in that category, that is a memorandum—I don't have the number at the moment, I'll supply the number to the
 1891 Court—that is a memorandum prepared by Gorman as an official of International before it was acquired by Greater Buffalo. It doesn't fall in that category and we will withdraw that exhibit. All of the rest we press be received in evidence.

The COURT: Mr. Stevens, do you have that particular exhibit in mind? Don't look if it takes a lot of looking. Go ahead.

Mr. BERNSTEIN: So that the posture of the case is the Government contends that these exhibits should be received in evidence. It is the Government's position that if the defendants subsequently move for a dismissal of the case on the grounds that the Government failed to establish a prima facie case, even without the documents under advisement it would be clearly erroneous for the Court to dismiss the matter. With the documents under advisement it strengthens the case
 1892 more. That motion has not been formally made and as of this moment what is before the Court is the Government's motion to receive these documents in evidence. That the Government would make the same argument in opposition to the defendants' motion to dismiss, whether the documents are received or not.

The COURT: That's what I asked you, if the posture is a motion for non-suit or motion to dismiss.

Mr. BERNSTEIN: I think it is. I would think that is what the defendants did state.

Mr. RAICHLE: We have objected to the documents on the record and repeat the objection to preserve the record. I conceive the situation to be this: if your Honor held, after considering the arguments and reading the record, at least reviewing it, and considering the briefs, that the Government had failed to lay a basis for receipt of the documents in that independent
1893 is not sufficient on which to base a finding of a conspiracy, that is, the conspiracy charge, that it would follow, as a matter of course, that the motion for a non-suit, for a judgment in favor of the defendant be granted. Certainly, if there is not enough evidence to make the finding required to be made before the documents be admitted, there is not evidence enough on which to say that the plaintiff made a case to survive a motion at the close of the plaintiff's case, if I make myself clear.

Technically, we haven't made the motion to dismiss, conceiving it ought to be made after your Honor—

The Court: I understand that. Let's assume that it all came in, you would make it, nevertheless?

Mr. RAICHLE: Yes, your Honor.

Mr. STEVENS: Yes, your Honor.

The Court: How about you, Mr. Stevens?

Mr. STEVENS: The position of NEA is the same, we have objected to each of the documents which is being offered for the reasons which Mr. Raichle stated, and we also wish the
1894 Court to consider certainly if the documents are not admitted and even if they are admitted to round out the record, in behalf of NEA, we would also like to join in Mr. Raichle's motion that the existing temporary injunction be dissolved, and point out to the Court that by the terms of the existing temporary injunction certain runs of NEA are presently frozen in the Wilkes Barre plant.

The Court: The biggest problem I have, gentlemen, are these letters of Nicht's wherein he writes commentaries to himself. I don't want to characterize that. You say they are memoranda made in the business. But I think it needs more than that probably to establish it. On the other hand, you take the rest of the communications, as we know the law of conspiracy, if you once establish a conspiracy then the communications of one conspirator and the acts of one conspirator with respect to another are binding on all.

1895 **Mr. RAICHLE:** In the furtherance of it, in the furtherance of the conspiracy.

The COURT: That is right. That puts me to the problem, gentlemen; assuming I were to cast out Nicht's affairs, I mean wherein he writes notes to himself—not to himself, I characterize it that way—he writes notes for some purpose and left them in his desk. I still feel then that I may have to require some burden of going forward here. I'm talking about Mr. Raichle representing the Greater Buffalo Press. I don't know, I will have to sit down and think about that. I don't think there is need of any briefs, I think I can decide that quickly, and I can give you hopefully, a reasonable trial date. There is an image in the wind that there is going to be another judge here one of these days, but I am sure that won't happen before some time, but it would be helpful. Anyway, I will try my best, in fairness to the Government and all litigants, to decide that 1896 issue and give you a reasonable trial date if I decide that you have to go forward, I mean, with the defendants' proof.

Mr. RAICHLE: Your Honor has our briefs on the subject?
The COURT: Yes.

Mr. RAICHLE: I think we have briefed everything with considerable care, I don't know how much help it will be.

The COURT: I don't think there is any need of any more briefing, I have the package in hand, I will do the best I can.

Mr. BERNSTEIN: May I say one word with respect to the defendants' motion for lifting the injunction. I am completely taken by surprise with that. I think this should be a motion submitted and argued. The Government has always contended an early trial and prompt disposition of the merits should supplant an injunction. I want to make one point—

The COURT: Mr. Bernstein, let me say that surprise is 1897 always lightened by the passage of time. You can be sure that you will have time to recover before I decide this motion.

(Thereupon the court was in recess at 7:00 p.m.)

1898

VOLUME 5

[Caption Omitted in Printing]

Adjourned date of trial in the above entitled action held before the HON. JOHN O. HENDERSON, United States District Judge for the Western District of New York, commencing on June 27, 1967, at Buffalo, New York.

Appearances: *Lewis Bernstein, Esq.*, and *Elliott P. Feldman, Esq.*, Department of Justice Antitrust Division, appearing on behalf of the Government.

Messrs. Raichle, Moore, Banning & Weiss, by *Frank G. Raichle, Esq.*, and *James O. Moore, Esq.*, appearing on behalf of the defendant Greater Buffalo Press.

Messrs. Baker, Hostetler & Patterson, by *Richard Stevens, Esq.*, and *Sargent Karsch, Esq.*, appearing on behalf of the defendant NEA.

1899 PROCEEDINGS OF JUNE 27, 1967, COMMENCING AT 10:00 A.M.

The COURT: Gentlemen.

Mr. RAICHLE: Your Honor, before we get to anything else, I would like to present Mr. Stevens' associate and partner, Mr. Sargent Karsch, of Ohio. He is a member of the Bar of Ohio, a member of the Bar of the District Court there, I would like to ask your Honor's permission for him to participate in this.

The COURT: Pleased to have you, indeed.

Mr. KARSCH: Thank you.

Mr. RAICHLE: Well, we come to that point in the case where we call our witnesses, your Honor having reserved on our motion to dismiss. Shall I proceed that way?

The COURT: Yes.

Mr. RAICHLE: Mr. Koessler.

JOHN WALTER KOESSLER, called as a witness in behalf of the Defendant, Greater Buffalo Press, and being first duly sworn, testified as follows:

1900

DIRECT EXAMINATION

By Mr. RAICHLE:

Q. Mr. Koessler, what is your business, what do you do?

A. I am in the printing business.

Q. And with what concern?

A. Greater Buffalo Press.

Q. What office do you hold in Greater Buffalo Press?

A. President.

Q. Who are the stockholders of Greater Buffalo Press?

A. All of the members of the Koessler family.

Q. In other words, it is a closed corporation, owned by the members of your family, including yourself?

A. Yes, sir.

Q. When was Greater Buffalo Press brought into existence?

A. 1926.

Q. It is a New York Corporation?

A. Yes.

Q. Prior to 1926 what had been your business, sir, or occupation?

A. I was a newspaper reporter on Buffalo papers.

Q. Which of the Buffalo papers?

A. Well, all of them at one time or another.

Q. I see. When did you cease to be a reporter on the Buffalo papers and go into business for yourself?

A. I went into business in 1926.

Q. And what was the business and who were your 1901 associates?

A. My father, myself, a fellow by the name of Charlie Frieberg, a fellow by the name of John Tranter.

Q. Had he been connected with one of the papers, Mr. Tranter?

A. John Tranter was managing editor of the Daily Star, a newspaper which went out of business at that time.

Q. Did you and these other people whose names you mentioned, including Mr. Tranter, organize Greater Buffalo?

A. Yes.

Q. What was your contribution?

A. Money.

Q. I mean how much?

A. \$1,000.

Q. How much did Mr. Tranter put in?

A. \$1,000.

Q. And who else put in?

A. Mr. Frieberg.

Q. How much did he put in?

A. \$1,000.

Q. And with that \$3,000 in the aggregate, Greater Buffalo commenced business?

A. Yes.

Q. And what was its business at that time?

A. Well, we bought an existing company called—owned by a fellow by the name of Alf Tovey. He owned three news-
1902 papers—two newspapers, the International Gazette was one.

Q. That was a neighborhood newspaper?

A. Yes, in Black Rock.

Q. That is in the northwest part of Buffalo?

A. Right, and the Cold Spring Advertiser, which was a community paper over in the Jefferson—

Q. Main Street area?

A. Well, the Jefferson, Utica, Ferry Street area.

Q. Was there another one?

A. No. There had been, there wasn't at that time.

Q. And what did you personally do in connection with this venture, what were your duties?

A. Well, they had a printing plant and I went out and solicited the advertising for the papers and wrote the editorial contents and worked in setting the type and running the press and doing whatever had to be done to get the paper out.

Q. You say they had a printing plant. Where was it located, of what did it consist?

A. Well, it was located in a house. Tovey lived upstairs. The basement—it was a private dwelling, a three-story building or dwelling, rather, and the basement had a press set up in it, and what used to be the dining room had a linotype machine 1903 in it back in the rear, which was probably—I don't know what the rooms were—they had a type setup where you put the type together, all hand type.

Q. Then you functioned as a reporter, the editorial writer, and contributed your efforts to the operation of printing, as well?

A. Right.

Q. And you also solicited advertising?

A. Yes, sir.

Q. And how many presses did you have, just the one?

A. One.

Q. The one you referred to?

A. Yes.

Q. Did the company buy that new or—

A. That was there. It was at that time thirty, forty years old. It was a press where they printed four pages at a time on one side of the paper, one sheet at a time, and you had to turn the paper over and print the other four pages on the other side of the paper, and then you had to fold them.

Q. Without too much detail; the venture, due to your efforts

and probably those of your associates, whom you mentioned began to be successful, did it?

A. Yes.

Q. Did you print legal notices and items of that 1904 character?

A. International Gazette did, yes.

Q. That is the Black Rock neighborhood paper?

A. Right.

Q. Was it, in the course of time, made one of the official publications for the courts in this vicinity for legal notices?

A. The courts used it, I don't think it was ever an official paper, but it was used, as such.

Q. This is a little leading, but I want to get over this preliminary matter. Did the depression help the development of the paper?

A. Yes.

Q. How?

A. About 1927 or late in 1926 the drop in the real estate market came along and there were a lot of foreclosure notices and the advertising in the paper built up as a consequence of that.

Q. And——

A. Later on it got to be instead of four pages it got to be six.

Q. And in the course of time, more than that?

A. I think maybe on occasion it was eight pages.

Q. Did you print such things as bankruptcy notices, judgments, foreclosures?

A. Those kind of things, yes.

1905 Q. Notices of sale——

The COURT: I can take notice of all that. I was in that business as really a fledgling lawyer. I remember the type of competition that existed between International Gazette and the Law Journal, and I remember your man, Cliff Bush, who used to hang around the courts, particularly the County Court where most of the foreclosures were conducted, and it was nip and tuck as to who got the notices. I had something to do with a bank firm at the time, I know it well.

Mr. RAICHLE: We will pass over it quickly.

By Mr. RAICHLE:

Q. In the course of time, did you expand your facilities?

A. Yes. This International Gazette also did printing business. I mean they printed circulars and letterheads, envelopes, all of these things, and with the money we made, which was

made very slowly, we bought a rotary press so that we could print the circulars and, oh, print for customers that had bigger quantities.

1906 Q. Let me ask you; in the course of time did you buy out or cause your family to buy out the interest of Mr. Tranter and the other gentleman to who you referred?

A. Yes.

Q. When were those purchases made?

A. I don't recall the actual years. Charlie Frieberg was going to run for sheriff and needed some money, so he sold his stock for that reason.

Q. What did you pay him?

A. \$25,000, something like that.

Q. Was that after you had been operating for some years?

A. A couple of years.

Q. What did you pay Mr. Tranter?

A. Fifteen I think was the figure we paid him.

Q. You took him out early?

A. He got a job as—or got himself connected with the Courier as managing editor. He wasn't interested too much.

Q. I want to trace the development of this business. You were printing these things that you spoke of, you purchased the rotary press. About when was it you got the rotary press?

A. We purchased that from the Courier Express when they put up the new building, they abandoned the old building.

1907 Q. What year about?

A. 1929-1930. Maybe 1928.

Q. Did the time come when you moved out of this house—

A. Yes.

Q. Where you had been?

A. Moved over to a building on Hertel Avenue.

Q. And how long did you stay there?

A. Oh, two or three years.

Q. And was the business, in volume, expanding during those years?

A. Yes.

Q. Were you obliged to expand your facilities?

A. Well, in printing the circulars, the people like Kobacker's and Baker's, these people wanted to make them more attractive and wanted to put a little color on them. First of all, we got some facilities to put one color on. We added to them, put two colors on.

Q. When did you start to color print, about when?

A. That came about 1932.

Q. And you say first you had a one-color operation, then subsequently you added to the colors you included in your printing?

A. Right.

Q. Now, how long were you on Hertel Avenue?

1908 A. We were on Hertel Avenue from 1928 or 1929 until 1932. We moved to Niagara Street. That is the time we put the four-color press in.

Q. That was the time you what?

A. Put in the four-color press.

Q. Where did you get that press?

A. From the Syracuse Herald.

Q. And in what year?

A. 1932-'33.

Q. When did you first begin to print colored comic features?

A. At that time. When we bought the press from the Syracuse Herald we began to print the comic sections.

Q. With whom did you do business at the Syracuse Herald?

A. With a man by the name of Edward E. A. O'Hara.

Q. Tell us, in your own words, how the printing of colored comic features developed from that point over the next few years?

A. Well, we began to print the comics for the Syracuse Herald. Bud O'Hara was a friend of the Connors family in Buffalo, that was the second job we got, and he helped us—recommended us to print the comics for the Courier. Then we got a job in Chicago, called the Chicago Sun Times or—I beg your pardon, it was the Chicago Times in those days, and then
1909 it went on from there and we picked up—I can't remember the order on them—but every year or two we would get a couple of jobs, sometimes more.

Q. Were these jobs, including the Syracuse paper and the Buffalo paper, instances where the papers had theretofore done their own coloring printing where the comic features were concerned?

A. Most all of the jobs we got were jobs from newspapers that printed their own comics.

Q. But I mean you started with the Syracuse paper, followed with the Buffalo paper and the Chicago paper, were those three papers, for example, papers which theretofore printed their own color comic sections?

A. That is right.

Q. As your business grew during the 1930's, and for that matter, into the '40's, did you employ salesmen to sell your printing to such papers and to persuade them to cease printing their own color comic sections and give the business to you, or did you solicit that business, or both?

A. Well, both. I solicited and Kenneth did.

Q. Who is Kenneth?

A. My brother. We had a fellow by the name of O. L. Hershiser.

Q. How long did the plant remain on Niagara Street?

1910 A. Four years.

Q. That would bring us up to what?

A. 1936.

Q. Where did you move your facilities at that time?

A. We moved to Groat Street.

Q. Is that where you are now located?

A. Yes.

Q. And what did you have at Groat Street in the way of facilities, not in detail, but in outline, at the time that you——

A. We bought a new Goss press.

Q. Is that particularly adaptable to the printing——

A. Yes, built especially for printing comic sections.

Q. And approximately what would that cost, or did it cost?

A. It cost \$36,000.

Q. And since that time and down to the present, speaking of the Groat Street operation, the Groat Street plant, have you expanded your facilities?

A. Yes. We have created a—set up a plant in Dunkirk, New York; one in Lufkin, Texas; one in Sylacauga, Alabama; and we have purchased——

Q. I will get to those in a minute. I wanted particularly to know, did you plough back the money that you made through operational earnings into the plant on Groat Street?

1911 A. All of it.

Q. And from your early beginning, which you have told us about, down to date, have you financed, for the most part, your Groat Street operation through the redeployment of the money, ploughing it back, as the banker says, into the business?

A. Right.

Q. And over this period of time, during his lifetime, was your father active in the business?

A. Yes.

Q. In what capacity?

A. Well, he was a printer—he was not a printer by trade, he learned to be a printer. He was a tool and die maker by trade, and he was very helpful in designing machinery and rebuilding it, and those were the things that were very important to us.

Q. When did your father pass away?

A. 1951.

Q. Has your brother Kenneth been active in the business?

A. Yes.

Q. Grown up in it with you?

A. When we were operating on Niagara Street, our first plant, he was going to school and he used to come over after school and work there.

Q. Were other members of your family active in the 1912 business?

A. Yes. I used to get my sister to help me, and the lady who is now my wife used to come in and help out in the mechanical end, stuffing papers, folding them, things like that.

Q. That was more so in the early days?

A. Yes.

Q. As the business expanded, as the facilities expanded, as the number of employees increased, did they all continue to help?

A. Yes, they all worked.

Q. Throughout many years?

A. In overalls.

Q. At Groat Street, your plant here in Buffalo, how many presses do you have?

A. Three.

Q. When did you open the plant in Dunkirk?

A. 1947.

Q. And did you continue to print in Buffalo and in Dunkirk these comic sections?

A. Yes.

Q. There has been so much talk in this case, and properly so, necessarily so, about the printing of comic sections for newspapers. Were you also, through these many years of your development, increasing what we might call your commercial printing business?

A. Yes.

Q. And as of recent years, the last ten years, what does that consist of? Just give us an example of what you print, other than comic sections for newspapers?

A. Well, we print supplements that go in newspapers, and go through the mail, for Sears Roebuck, Montgomery Ward, W. T. Grant Company, Kresge's, Woolworth's, substantially every nationwide organization.

Q. And you say sections for newspapers; do you also print circulars for their use, other than through newspapers?

A. Yes. These sections that I talk about are circulars inserted in newspapers. We call them newspaper sections, actually they are circulars.

Q. All right. Is that what you generally refer to as commercial printing?

A. Yes.

Q. Do you print catalogs or anything of that kind?

A. Yes.

Q. Those do not go through newspapers?

A. They go through the mail.

Q. Do you have a substantial volume of that kind of printing?

A. Yes.

Q. I mean unrelated to newspapers?

A. Unrelated to newspapers.

1914 Q. Is that today, and has it been over the last many years, a substantial portion of your business?

A. I think presently it represents at least thirty percent of the business, probably more.

Q. Of your overall volume in all these plants to which you have referred?

A. That is right.

Mr. BERNSTEIN: Excuse me, I didn't hear the question. Would you repeat it?

(Thereupon the last question and answer was read by Reporter.)

By Mr. RAICHLE:

Q. To make it clear, what I am getting at, what you are now referring to is business unrelated to newspaper circulation?

A. Yes.

Q. Now, when did you first begin to have contact with King Features or NEA or any of these purveyors of features? By

contact, I mean just what I say, when were you conscious of their activities?

A. Oh, I think we printed some sections for NEA for the Buffalo Color Press here, or what was the Buffalo Color Press, back in the late '30's; '38, '39 and through the forties.

Q. When did you first have any contact with the Hearst organization, King Features?

A. The first time we actually printed anything for them I think was in the early '50's, 1953. But they were around trying to get us to print things always, during the forties and late thirties and—

Q. Now, who have been in the industry printing, name some of the others in the same line of business as yourself.

Mr. BERNSTEIN: Could we get a period of time?

Mr. RAICHLE: I will fix it up as to time.

By Mr. RAICHLE:

Q. Well, go back in the forties, who was there?

A. World Color Printing Company, Eastern Color Printing Company, Star Color Printing Company, I think were in business then. Those were the important ones.

Q. Are they still in business?

A. Yes.

Q. And have been during these years?

A. Yes.

Q. To which you referred?

A. Yes. International Color Printing Company, of course, King Features.

1916 Q. Was there one called Acme?

A. Yes, they were in business then and are now.

Q. They are located where?

A. In San Bernadino, California.

Q. Where is Eastern Color Printing located?

A. In Waterbury, Connecticut.

Q. And more recently has there been another one added called—

Mr. BERNSTEIN: Your Honor, I object to the leading.

Mr. RAICHLE: All right.

The COURT: It must be knowledge of fact in the industry.

Mr. RAICHLE: The one we have had discussion with, the one Mr. Hornady went to work for.

Mr. BERNSTEIN: I have no objection to this particular question. I think now that we have gotten through the preliminaries, I think at this time we should switch from our leading questions.

The COURT: I know about Hornady's company. This is just old hat. Is there another one by Hornady?

The WITNESS: Southern Color Print.

By Mr. RAICHLE:

1917 Q. Where is that located?

A. In——

Q. Norfolk?

A. Adjacent to Norfolk.

Q. Newport News?

A. Newport News.

Mr. RAICHLE: I know I am a little repetitious, but I was thinking of the record and——

The COURT: It is all right. I don't think there is any harm in leading at this time. This is ancient history.

Mr. RAICHLE: I announced it was leading.

The COURT: Fine.

By Mr. RAICHLE:

Q. Now, let's talk a little bit about the establishment of some of these plants of yours, like Lufkin, Sylacauga, and later on about the acquisition of International Color Printing——

The COURT: Mr. Raichle, there is one thing I am interested in. Mr. Koessler has apparently something to sell, particularly to newspapers who were printing their own, and you were able to persuade a number of them to give up that work. I am just casually interested, at least, in what did you have to sell that they could not contend with nicely themselves? Was there a problem in a newspaper printing its own as against what you could do for them?

The WITNESS: Our only thing to offer them was a lower price and a better job.

The COURT: I remember some testimony, I think, in this case, that it is an unusual chore for a newspaper to run its own color printing, is that correct? It isn't real newspaper work, it is kind of a collateral thing?

The WITNESS: They had to have a special crew in those days to run it, which was—it was a little different than the run of the mill, and it was a labor problem with them, and it was more

expensive than we could do it. That is why they bought our product.

By Mr. RAICHLE:

Q. Developing what the Court has in mind; there has been testimony here that any newspaper can print its own?

A. That is right.

Q. And is that the fact?

A. That is a fact presently.

Q. And have some newspapers, which have ceased printing their own and on occasion had you print for them, gone back to printing their own?

A. Yes.

Q. And can any newspaper readily enter the market?

A. They can.

Mr. BERNSTEIN: I object, your Honor.

The COURT: Overruled. He should know, he is in the business.

Mr. RAICHLE: I might say that that was testified to by witnesses on the occasion when we had a hearing in connection with the temporary injunction.

Mr. BERNSTEIN: My objection does not go to the substance of the question, it goes to the form of the question.

The COURT: Overruled. I am sorry to interrupt, I wanted to get exactly from this gentleman what he had to sell to the newspapers at that time.

1920 Q. Is it a form of know-how; what is it?

A. It is a form of know-how. In later times we developed better machinery, better machinery than the printing press manufacturers put on the market. Better methods of doing it so that we cut the costs and were able to compete on costs. We were also able to compete on quality, we did a better job, and we could print—we were more flexible, that is, a lot of the newspapers could print eight pages or twelve pages but they could not print ten pages or fourteen pages.

Q. What is the conventional number of pages used by most of them?

A. Well, in the early times, it was eight or twelve or sixteen. We developed machines to print ten, fourteen, the intermediate number of pages.

Q. Now, let's draw your attention to the Lufkin story. How did the construction of a plant by you in Lufkin come about?

A. We had accounts down there.

Q. What?

A. We had accounts that we were printing up in Dunkirk and in Buffalo for Texas.

Q. When you say you had accounts, you mean were printing for newspapers located in the southwest?

A. That is right.

1921 Q. Can you give us the names of some of those papers?

A. Yes. The Dallas News, the Houston Chronicle, the San Antonio Express, the New Orleans Times Picayune, the Memphis Commercial Appeal.

Q. Were those papers, which you have just mentioned as among those for whom you were printing in the southwest, papers which had formerly printed their own?

A. The Dallas News printed their own, the Houston Chronicle printed their own, the Memphis Commercial Appeal printed their own, the New Orleans Times Picayune, all the four I have mentioned did, yes.

Q. And they became customers of yours?

A. Yes.

Q. Prior to the time when you built the Lufkin plant?

A. Right.

Q. Then will you tell us the considerations that went in to the building of the plant or the erection of the plant, the locating of the plant in Lufkin, Texas?

A. Well, we thought that was a good place to build a plant, establish a plant, and make some money.

Q. And did you feel you could better serve the area with a plant located there than one located in Buffalo?

A. Yes.

1922 Q. Why?

A. It saved a tremendous amount of transportation cost.

Q. And when did you first begin to think about the plant, give serious consideration to building a plant there?

A. In 1952 or 1953 we thought about it, but we began to do something about it in those times.

Q. I am sorry.

(Thereupon the last answer was read by Reporter.)

By Mr. RAICHLE:

Q. Was this a calculated business risk?

A. It was.

Q. Was the plant located in proximity to a paper mill?

A. Yes.

Q. Was the location of the source of supply of print a consideration which——

A. Yes.

Q. ——you took into consideration?

A. That is right.

Q. Now, did anybody, King Features, NEA, or anybody else, assure you of business if you would build such a plant?

Mr. BERNSTEIN: I object.

1923 The COURT: Overruled.

The WITNESS: No.

By Mr. RAICHLE:

Q. Did King Features or NEA or anybody contribute money or encouragement to the building of the plant?

A. No.

Q. Was it the proximity to the source of supply and the belief that you could generate business through the savings of transportation costs that moved you to do it?

A. Yes.

Q. Do you recall approximately how much money you spent in erecting, equipping, and completing the plant at Lufkin?

A. More than two million dollars.

Q. Where did the money come from?

A. It came from the earnings of the operations of the Buffalo plant and Dunkirk.

Q. It was a capital investment by Greater Buffalo Press?

A. All except the building. The building—the Southland Paper Company financed the building and the land, and we paid that off, paid them back.

Q. Over a period of time?

A. Yes, over five years, I think it was.

1924 Q. Now, after this Lufkin plant was opened—by the way, when was it opened, when did it commence operation?

A. Started operations in 1958.

Q. What additional business did you develop for the plant? Can you remember the names of some of the additional sources?

A. Well ——

Mr. BERNSTEIN: I object to the form, your Honor, on the grounds this assumes that the witness has testified as to what business he had in the plant at the beginning, he said additional. I haven't heard any testimony concerning what busi-

ness was in the plant when it opened. The witness' testimony, as I understand it, was that he was printing for certain newspapers in the south and that is what gave him consideration as to opening the plant. I didn't hear testimony as to what runs were in that plant when it opened.

Mr. RAICHLE: Well, let's take it your way.

1925 By Mr. RAICHLE:

Q. When the plant was opened, ready for operations, what accounts, to use your word, did you print there?

A. Well, there was the Dallas News, the Houston Chronicle, the San Antonio Express, we brought some of our business from Buffalo down there, the Kansas City Star from Dunkirk, the St. Louis Globe Democrat, the Shreveport Times, all the Harte-Hanks Newspapers, the New Orleans Times Picayune—

Q. Now let me ask you this; did you also have commercial business, as we have used the term?

A. Yes.

Q. In Lufkin?

A. Yes.

Q. And for whom did you print, after the plant opened, in the commercial field?

A. Oh, the same kind of people. One of the accounts down there was the White Auto Stores. Printed stuff for them down there.

Mr. BERNSTEIN: What stores?

The WITNESS: White Auto Stores.

By Mr. RAICHLE:

Q. What is their business?

A. They run a chain of automobile stores, like West-
1926 ern—

Q. What kind of printing did you do for them?

A. Commercial printing.

Q. Unrelated to newspapers?

A. Yes. We print circulars for Sears Roebuck, Grants, everybody down there.

Q. In the Lufkin plant, as well as elsewhere?

A. That is right.

Q. Now, I show you a paper—I will ask the Clerk to mark it. (Thereupon document referred to was marked Defendant's Exhibit D-1 for identification.)

By Mr. RAICHLE:

Q. Is this alist you made up for me showing the contacts or the accounts which you had from papers in the southwest prior to the opening of the Lufkin plant, and following it, those that you procured for the plant after the opening of the plant?

A. Right.

Q. And then on the second page is there a list of orders placed by Hearst and King Features at Lufkin after the plant opened?

A. Yes.

1927 Q. And then the last one lists some accounts which you took from King Features after the opening of the plant?

A. That is right.

Mr. RAICHLE: I offer that in evidence.

Mr. BERNSTEIN: Your Honor, we have no objection to its receipt in evidence at this time, subject to a motion to strike after we complete the cross examination to determine the accuracy. I haven't had a chance to check it or review it.

The COURT: You offer that in evidence?

Mr. RAICHLE: Yes.

The COURT: Received; subject to that statement.

(Thereupon Defendant's Exhibit D-1, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: Would your Honor like to look at it?

The COURT: Not now. What does it purport to be?

Mr. RAICHLE: A list of newspapers for which he was printing colored comic sections in the southwestern part of the
1928 country before the opening of the plant. He was doing the printing at Buffalo or Dunkirk. Then a list of those he was able to procure after the plant opened from the newspapers in that general area, and then the last is a list of those which he took by competing with King Features after the opening of the plant and printed in Lufkin.

Mr. BERNSTEIN: Could we arrange to get a copy of that?

Mr. RAICHLE: You may have this.

Mr. BERNSTEIN: Thank you.

The COURT: Make a copy for Mr. Bernstein now.

Mr. RAICHLE: Your Honor, may I speak with Mr. Moore for a minute?

The COURT: Yes.

By Mr. RAICHLE:

Q. You spoke of the paper company helping to finance your building down there in Lufkin, right?

A. Yes.

Q. And do you know whether the paper company had made the same offer or similar offers to other printers?

A. Made a similar offer to Acme Color Printing Company.

Q. And Acme did not take advantage of the offer?

A. No.

Q. Now, did you, in advance of embarking upon the Lufkin venture, disclose your intentions to either King Features or NEA?

A. No, we tried to keep the knowledge from them.

Q. Can you give us any figures on the transportation savings to newspapers consequent upon the Lufkin location?

A. I had Mr. Hammond work up these figures, and he approximates that each year we save the newspapers down in Texas a half million dollars in transportation alone, as against printing those sections in the Buffalo-Dunkirk area, so that in ten years it adds up to about five million dollars.

Q. Are all those savings passed on to the various newspapers?

A. Those are passed on to the newspapers, all of it.

Q. Is the commercial business, as distinguished from the newspaper comic sections, a business growing year by year?

A. Yes.

Q. In Lufkin?

A. In Lufkin and elsewhere.

Q. In your other plants as well?

1930 A. Yes.

Q. Now, let's go from Lufkin to Sylacauga. We all know, and we have had much discussion, about a plant in Sylacauga. When did you first give consideration to the building or erection and equipping of a plant in Sylacauga, Alabama?

A. Sylacauga or the south?

Q. In the south?

A. In 1947.

Q. And what took place in 1947 in that connection?

A. Well, we thought that the south—they call it the deep south down there—was a good place for a printing plant, there was none there.

Q. Again, why did you think it was a good place?

A. Because there was—we would save transportation and——

Q. Save it for whom?

A. Save it for the newspapers.

Q. You mean the newspapers located in the deep south?

A. There was no color plant in the deep south.

Q. The saving would be for——

A. For the newspapers in the deep south, yes.

Q. And what did you do back in 1947 in that connection, if anything?

A. Kenneth Koessler made a tour of the south, substantially all of the south, with the president—with the representative, rather, of Buffalo Color Press, which was owned by NEA. This representative of the Buffalo Color Press made the trip with Kenneth under the direction of the President of NEA, a fellow by the name of Ferguson, Fred Ferguson, and the idea was that NEA and Greater Buffalo were going to cooperate in building and establishing a plant in the deep south, a color printing plant.

Q. There was some thought of a partnership in that venture?

A. Right.

Q. Did that ever come about?

A. No.

Q. Was the idea then, a participation by NEA in the construction or equipping of such a plant, completely abandoned?

A. Yes. Mr. Ferguson, the President of NEA, came down to Buffalo and he heard what Kenneth and Mr. Leon Herman had to say——

Q. Leon Herman being the man that went——

A. From the Buffalo Color Press. Their suggestions as to where the plant should be located, how much it would cost, how long it would take to get it on a paying basis, and Mr. Ferguson said that he didn't want to invest NEA's money in it.

Q. There is no joint venture in that connection?

A. None.

Q. Then when did you next give consideration to a plant in the south, or did you continue from that day forward to so consider?

A. At that time, in 1947-1948, the news print shortage developed, a very acute one, so that it wasn't possible to locate a plant in that area at that time because you could not get news

print. The news print came from the north and the southern papers and all other papers were buying every pound of it they could to print out the black sheets, the newspapers. We gave no thought to it, we transferred our plant to the southwest, where they had a news print industry.

Q. That was the Lufkin venture you have told us about?

A. Right. Then in 1953, I think it was, or in 1954, a fellow by the name of—in the meantime, a news print industry had developed in the south, started in 1950, I think, and by 1954 or 1953 they were operating—and a fellow by the name of Ralph Watt, the name of this paper company was the Coosa River Paper Company, it was part of the Kimberly Clark paper organization, and this fellow——

Q. Excuse me, did you have some talk in November 1933 of 1950 with the Journal Constitution of Atlanta, a newspaper, in connection with building your plant in the south?

A. That is one of the reasons why we wanted a plant in the south, we had some business there. One of them was the Atlanta Journal.

Q. Is this a copy of a letter you wrote to Mr. Powell, the Business Manager of the Journal? I will show you this in a minute?

A. I wrote that letter.

Mr. MOORE: It was marked in the application for a preliminary injunction, Exhibit D-5.

Mr. RAICHLE: I will offer it as an exhibit.

Mr. BERNSTEIN: No objection.

The COURT: Received.

The WITNESS: We had other business in the so-called deep south. We had the Nashville paper, the Mobile paper, the Miami paper.

(Thereupon letter referred to was marked Defendant's Exhibit D-2 and received in evidence.)

Mr. RAICHLE: May I read this to your Honor?

1934 The COURT: Yes.

Mr. RAICHLE: It is dated November 24, 1950. "Mr. Horace Powell, Business Manager, Journal Constitution, Atlanta, Georgia. Dear Mr. Powell: This is to confirm our recent conversation with respect to the establishment of a southern comic printing plant in the event of your acceptance of our direct proposal to produce comic sections for the Journal Constitution. Present conditions of the newsprint market and build-

ing industry make it impractical if not impossible to launch such a project at this time. However, we will agree to get started on such a plant within one year after newsprint becomes available in the south, at the contract price and any building restrictions imposed by the Federal Government, because of war or defense needs have been canceled. The object of establishing such a plant would be to materially reduce transportation charges on your comics, as well as those which we are printing or would be printing for other newspapers in the south. It is difficult to specifically define such a program, but our intention would be to establish the southern plant at the earliest possible practical time. With thanks for your kindness and consideration during our visit. I am, Sincerely, J. W. Koessler, President."

By Mr. RAICHLE:

Q. So that back in 1950, as well as in 1947, you were planning, when the opportunity presented itself and conditions were propitious, to open a plant in the deep south?

A. Yes.

Q. You were telling us about a man from the Coosa River Development Company talking to you and, if you would, fix the time again and continue your testimony on that subject; if you will?

A. This was in 1954, and he was the general manager, I think, and vice president of this Coosa River Paper Company. He came to Buffalo and said that the Coosa River Paper Company at that time had plans to increase their production, to put in an additional news print machine, and that he was looking for news print business to fill that mill up. He wanted to know if we would be interested in establishing a printing plant in the vicinity of that mill, under a plan similar to the one that we had established in Lufkin, and I told him yes, we would.

Mr. BERNSTEIN: I believe the witness testified that the Lufkin plant was in 1958. Do I understand the witness' testimony; is he quoting Mr. Watts in 1954?

The COURT: Clear that up.

The WITNESS: Our plans for Lufkin started in 1954. We actually didn't get the plant running until 1958.

By Mr. RAICHLE:

Q. Had you acquainted this gentleman with your plans in that regard?

- A. He had known about it, the industry picked it up.
- Q. He represented a paper mill, you were planning with a paper mill in the southwest—
- A. Yes.
- Q. In Lufkin?
- A. Yes.
- 1937 Q. And your plans in Lufkin preceded by many years the actual completion of this plant?
- A. Right.
- Q. These things don't come about in a day?
- A. No.
- Q. Now then, continue with Mr.—the man from—
- A. Ralph Watt of the Coosa Paper Company?
- Q. No, you were talking about the gentleman from the other company?
- A. Ralph Watt.
- Q. Ralph Watt, I seem to have trouble with that name. What was the name of his company?
- A. The Coosa River Paper Company.
- Q. All right. Go ahead.
- A. I told him that we were interested in such a plant, we had entertained the idea for some years prior. He said he would report that to his people. We talked about—he would put up a building, this was his proposal, he would put up a building, and he would sell the paper under the so-called market in that he would allow us some of the transportation that otherwise would have gone into delivering newspaper to the newspapers.
- Q. Let me make that clearer, if we can. He would deliver the newsprint to your plant?
- 1938 A. Yes.
- Q. In proximity to his mill?
- A. Yes.
- Q. Which turned out to be Sylacauga?
- A. Right.
- Q. Then you would deliver to the newspapers—take one as far away as Miami, as far from Sylacauga as Miami—that he would then absorb the cost of your delivery to Miami?
- A. Not all of it, as much as it would have cost to ship the white newsprint down there.
- Q. In other words, he would quote you a price, deliver his newsprint to you at a price which gave effect to what it would

have cost him to ship the newsprint to Miami in the given instance, right?

A. As it worked out, it didn't work that way.

Q. Tell us how it did work?

A. He would sell us the newsprint at the market price, he would allow the newspapers this differential, directly to the newspapers.

Q. That is how the savings was accomplished for the newspapers?

A. For the newspapers. Not for us, but the newspapers.

Q. And all of the savings in that manner were passed on to the newspapers?

1939 A. Yes.

Mr. BERNSTEIN: Excuse me, Your Honor. Mr. Raichle said "were passed on", I gather this was a proposed plan, it was not put into effect, is that correct?

By Mr. RAICHLE:

Q. Subsequently was that plan put into operation?

A. This was a plan proposed and discussed with Mr. Watt and myself and when we got in the Sylacauga plant we put it in effect or made the paper company put it in effect.

Q. So that the plan, in substance, was carried out?

A. Yes, since we have been there.

Q. To answer Mr. Bernstein's question; it was not only the plan, it was the accomplishment?

A. Right.

Q. Now then, when did you build the Sylacauga plant?

A. Well, we started that—sort of hazy when we started it, we didn't get it opened until 1963—I think about '58, '59, around there, we started that.

Q. All right. How was it financed?

A. It was financed by Greater Buffalo Press.

Q. Did the paper company build the building?

A. No.

1940 Q. Did you?

A. Yes.

Q. By the way, so we get the hierarchy of the plant structure correct, what is the name of the entity brought into existence to own the Sylacauga plant, Dixie Color?

A. Dixie Color Printing Company is the name of the company.

Q. That is a wholly owned subsidiary of Greater Buffalo?

A. Yes.

Q. In the case of Lufkin, what entity owns the plant?

A. I think the Southwest Color Printing Company is the name of the company.

Q. Is that a wholly owned subsidiary of Greater Buffalo Press?

A. Yes.

Q. Getting to Sylacauga again; approximately how much has Greater Buffalo Press invested in the Sylacauga plant through Dixie Color Printing Corporation?

A. I haven't got the actual figures. I think at the present time it is close to two million dollars.

Q. Is the Sylacauga plant modeled after the design of the Lufkin plant?

A. Yes. The machinery is designed after the machinery in the Lufkin plant.

Q. Are the machines built or rebuilt in accordance 1941 with—what shall I say—your building for Lufkin?

A. Yes, the same design, the same ideas that we had in Lufkin we put into Sylacauga.

Q. Now, how many people are employed at the Sylacauga plant, approximately?

A. About 75.

Q. Can you give us any idea of the saving that has been accomplished for the newspapers served down there?

A. Yes. We figured we have saved a quarter of a million dollars in transportation alone each year it has been there.

Q. For the newspapers?

A. For the newspapers.

Q. Your newspaper customers, for whom you print?

A. That is right.

Q. How much newsprint do you consume down there in a year?

A. Approximately 15,000 tons.

Q. At a cost of about what?

A. The present price is \$143 a ton.

Q. Did King Features or NEA, or either of them, in any way assist or encourage you in the building of this plant in Sylacauga?

A. No.

Q. Were you guaranteed any business by either of 1942 those outfits if you would build such a plant?

A. No.

Q. Did the idea or thought of building the plant in Sylacauga come to you through either of those two organizations?

A. No. I think there should be some explanation of this. My wish to build a plant—my thought was not to build it in Sylacauga, it was to build it in Chatanooga, in that vicinity.

Q. Why did you change to Sylacauga?

A. We changed out of deference to the opinions of Joe Gorman because Joe carried on some—

Q. At any rate, Mr. Gorman—

Mr. BERNSTEIN: I object. May the witness finish the answer, please?

Mr. RAICHLE: I thought he had. Had you finished?

The WITNESS: Joe Gorman talked to the people in Sylacauga, the Chamber of Commerce people, like that, and he thought he owed them some obligation to do something for the work they had put into it.

By Mr. RAICHLE:

Q. All right. Was this a calculated business risk, this 1943 construction of a plant in Sylacauga?

A. Yes, very definitely.

Mr. RAICHLE: Would you mark this? I might as well do it with one operation. I am going to offer this in evidence.

By Mr. RAICHLE:

Q. Is this a list of the accounts or newspapers for which you printed at Sylacauga, in the first instance, those which originated with Greater Buffalo Press?

A. Yes.

Q. And following, on the second page, a list of the accounts supplied to you by King Features?

A. Yes.

Q. And then there is a third list, those of NEA?

A. That is right.

Q. All of those on both lists being printed at Sylacauga?

A. Yes.

Mr. RAICHLE: I offer that in evidence.

Mr. BERNSTEIN: Pardon me. I heard Mr. Raichle say Buffalo Color Press; do you mean Greater Buffalo?

Mr. RAICHLE: I thought I said Greater Buffalo, I intended

1944 to. I thought I said Greater Buffalo Press, I intended to.
(Thereupon documents referred to were marked Defendant's Exhibit D-3 and received in evidence.)

Mr. BERNSTEIN: Subject to Plaintiff's motion to strike, your Honor.

By Mr. RAICHLE:

Q. Something was said early in the case in some affidavit or paper that sticks in my mind, that Hearst once had a contract with the Coosa River organization to which you have referred?

A. Yes.

Q. Did you ever have anything to do with that contract?

A. No.

Q. Was it ever assigned or sought to be assigned to you or anything of that kind?

A. No.

Q. And did you ever derive any benefit or advantage from it?

A. No, sir.

Q. Is your contract entirely different from that contract?

A. Yes.

Q. Now, at Sylacauga, do you own the building?

A. Yes.

1945 Q. I think we developed that before, didn't we? Now, does Sylacauga also do commercial printing?

A. Yes.

Q. Of the kind and character and for some of the same customers you heretofore mentioned when you were talking about Lufkin and Buffalo?

A. Yes.

Q. Sears Roebuck, et cetera?

A. Yes.

Q. Is a substantial portion of the Sylacauga printing over the years, since it has been opened, commercial printing?

A. Yes.

Q. Did you get any help of any kind or character from either King Features or NEA in building or preparing for operation the Sylacauga plant?

A. No, we did it all ourselves.

Q. That is the same in the case of Lufkin?

A. Yes, sir.

Q. Now, we go to another subject, the acquisition of International Color Printing Company. How did it come about—strike that out. When did you first give consideration to the

purchase of International Color Printing Company? About when?

A. Oh, we thought after we developed this new machinery that we could make International Color Printing Company into a paying—we never thought it was—we thought we could make it into a paying organization by putting our ideas, our mechanical ideas and machinery there.

Q. You, of course, knew of International Color Printing?

A. Yes.

Q. And did you know whether International Color Printing was printing exclusively for one outfit?

A. Yes.

Q. And for whom was it exclusively printing?

A. King Features.

Q. Prior to the time when you acquired International Color Printing, was International Color Printing soliciting any newspapers?

A. No.

Q. In other words, it was not engaged in the same activity you were engaged in?

A. No, it was strictly a contract printer for King Features.

Q. In other words, it was not a competitor of yours?

A. No.

Mr. BERNSTEIN: I object, your Honor.

Mr. RAICHLE: He knows who his competitors are.

Mr. BERNSTEIN: I object to the form of the question.

The COURT: Overruled.

1947 By Mr. RAICHLE:

Q. Was International a competitor of yours?

A. No. Our competitor was King Features.

Q. Of course, in the east you had Eastern Color Printing, did you not?

A. Yes.

Q. And they solicit the same type of accounts you do?

A. Yes.

Q. That is, Eastern Color Printing does?

A. Right.

Q. And they are in business today, continuing their activities?

A. Yes.

Q. Do you know whether on occasions they also printed for King Features, or don't you know about it?

A. I don't know. I know they took some business away from King Features. I don't know whether they printed anything from them.

Q. Eastern Color Printing was and is a competitor of yours?

A. Yes.

Q. Now, continuing with the matter of International Color Printing Company. Did there come a time when you had a talk with Mr. Gorman concerning the possible purchase by you of International Color?

1948 A. Yes.

Q. And who is Mr. Gorman?

A. He is the—he was at that time the general manager of International Color Printing Company. Whether he was an officer of the company, I don't know.

Q. Who owned——

A. He ran it.

Q. Who owned International Color Printing Company?

A. A family by the name of Govin.

Q. G-o-v-i-n?

A. Right.

Q. And, to your knowledge, had they been printing, that is, had International Color Printing been printing for Hearst or King Features for a long period of time?

A. Yes.

Q. Now, what did you learn from Mr. Gorman?

A. I learned that he was sort of unhappy with his customer, King Features, for one thing.

Q. I mean more particularly about the possibility of a sale by him and an acquisition by you of the plant?

A. He said that they were not making money or making very little, that the owners would sell if they could get a decent price for it.

Q. What did you say?

A. I asked him what a decent price was, what he
1949 thought.

Q. What did he say?

A. Well, he said they ought to get the net worth, at least, of the company.

Q. Net worth per book?

A. Right.

Q. Give us the conversation, the substance of it?

A. And I asked him to tell me what it was and he said he would, and I said we would likely be interested in buying on that basis, I would have to know what the net worth was. He said he would find out what it was on their books and he would let me know. He did some time later, he informed me of what the net worth of the company was as shown on their books, and I said on that basis we would be interested in buying it.

Q. What was the net worth, what did you pay for it?

A. Approximately \$575,000.

Q. Did you buy the assets or the stock?

A. Bought the stock.

Q. All of the stock?

A. Yes.

Q. And thereupon International Color Printing became a subsidiary, a wholly owned subsidiary of Greater Buffalo Press?

A. I think that is the setup.

1950 Q. Did you make some sort of a study or inform yourselves about the cost of operations, operating figures, to reach a conclusion as to whether you could have a profitable operation?

A. Yes. The business they printed—a big percentage of the business they printed for King was business that required a large number of plate changes, a large make-ready, a large volume of make-ready, and I thought with our system, our methods we had developed, it would eliminate that large percentage of that make-ready and therefore reduce their printing costs and permit us to make a profit.

Q. How did the price which you obtained for the printing after your acquisition compare with the price which International was receiving at the time of the purchase?

A. It was exactly the same price, exactly the same contract that International had for a period of I don't know how many years; many, many years.

Q. As far as price is concerned?

A. As far as price is concerned, and everything else, I guess.

Q. Did King Features or, for that matter, NEA or anybody else assure you in any way a continuance of any particular volume of business if you made the acquisition?

A. When we bought the company that contract had

1951 six months to go.

Q. Answering my question directly; did King Features directly or indirectly, or did NEA directly or indirectly,

assure you of any volume of business or item of business if you made the acquisition?

A. No.

Q. Did either of those organizations, or anybody representing them, seek to prevail upon you to purchase International Color Printing or make the acquisition?

A. No.

Q. Do you know whether International Color Printing, the business, the stock, had been offered to Hearst, to King Features?

A. I know it had been offered to Hearst and King Features is a part of Hearst.

Q. Prior to the time that——

A. Prior to the time we purchased it.

Q. Did you have any agreement with King Features or anybody else to extend any printing contract then in existence?

A. No.

Q. Has the commercial business, as we have been using the term here, distinguished from the newspaper printing, been an important and substantial part of the business volume at the plant since your acquisition of International at Wilkes Barre?

A. Yes.

Q. And when I say commercial, I mean the circulars and the catalogs and the type of things we have mentioned before, for Sears and others?

A. That is right.

Q. Did it have that type of business at the time of your acquisition?

A. No.

Q. Is that business, that kind of business, this commercial business, business you developed for International after your acquisition?

A. Yes.

Q. In addition to the commercial business, has Greater Buffalo Press furnished to International at Wilkes Barre newspaper comic section printing business?

A. A large amount of it.

Q. From accounts originated and obtained by Greater Buffalo Press?

A. Right, accounts that belonged to Greater Buffalo Press.

Q. Other than any business that came from King Features?

A. Yes.

Q. This was business that could be printed at Buffalo?

A. Yes.

1953 Q. And before its transfer to Wilkes Barre, had been printed?

A. Had been printed in Buffalo and Dunkirk.

Q. Now, in the early days of this litigation there was much talk about the union, fears of the union that if any business were transferred to Sylacauga there wouldn't be work for the union employees at International. Is the plant now operating at substantially its capacity?

A. It is operating at its capacity, with a great volume of overtime.

Q. So far as you know, the union is happy now?

A. The union is very happy.

Q. And——

A. As happy as unions can be.

Q. Let me put it this way; the fears of the closing of the plant and the layoffs have not eventuated?

A. (No response.)

Q. The fears that were entertained, at least expressed, have not——

A. No.

Q. Have not been justified by occurrence?

A. No.

Q. Now, is the operation of the plant at capacity accounted for in any part by this commercial printing we have re-
1954 ferred to?

A. Yes.

Q. And in substantial part by the——strike it out. And in part by the work transferred from Buffalo?

A. Right, sixty percent of it, as I remember the figures.

Q. Sixty percent of the volume currently produced at the International plant in Wilkes Barre is business that Greater Buffalo Press has originated other than King Features business?

A. Right. King Features exists by virtue of the fact sixty percent of the business they now have was put there by Greater Buffalo Press.

Q. You say King Features, you mean International?

A. International Color Printing Company.

Q. Exists?

A. Yes.

The COURT: I assume there is some advantage in doing the work in Wilkes-Barre, I suppose?

The WITNESS: We had a large amount of business that can be done there as advantageous as it can be done anywhere else, so we put it there.

The COURT: You got a good labor pool there, and an anxious labor pool?

1955 The WITNESS: That is right. They are all working.

The COURT: I think we should recess now.

(Thereupon the court was in recess at 11:35 a.m.)

(Proceedings resumed pursuant to recess, commencing at 11:55 a.m.)

By Mr. RAICHLE:

Q. Mr. Koessler, does the commercial work that you have been describing, as distinguished from the newspaper supplements, require, for instance, an art department, an engraving department, mat making department, composing room, and so forth?

A. Yes.

Q. And also a bindery?

A. Also a bindery.

Q. What other facilities?

A. Well, quite a sales force, for one thing.

Q. To get the business?

A. Yes.

Q. Does International have any of those —

A. No.

Q. Items?

1956 A. No.

Q. And does it rely on the Buffalo Art Department, Engraving Department, mat making, and so forth?

A. We produce all the art, all the composition, all the engravings, all the mats, all the services that are required to produce this commercial printing for International and for Dixie and for Sylacauga.

Q. But such facilities are not located in Wilkes-Barre?

A. They are all located in Buffalo and Dunkirk.

Q. And that part of the work is done and the product is shipped to Wilkes-Barre for the printing?

A. Right.

Q. Now, was the working capital of International Color Printing Company impaired at the time you purchased it?

A. They were minus \$107,000 in current assets.

Q. Versus current liabilities?

A. Versus current liabilities.

Q. That is an impairment of working capital?

A. Yes.

Q. And what is the situation today?

A. Their current assets exceed their liabilities by one million five hundred thousand dollars.

Q. Did King Features or anybody representing King Features assure you of any business whatsoever at or prior 1957 to the time of your purchase of the Wilkes-Barre business, International Color Printing?

A. No.

Q. How long have you known various of the personnel at King Features, particularly Mr. Nicht, whose name has been mentioned here?

A. I think I met Mr. Nicht for the first time in the late thirties, and saw him from time to time through the forties and fifties, and not too often.

Q. Now, of course, King Features, as the name implies, owned various features and licensed them to newspapers for publication, right?

A. Right, that is right.

Q. Sometimes referred to as syndicating the features?

A. That is the name.

Q. In addition to comic features, did King Features also license or syndicate the work of columnists and others?

A. Yes.

Q. In other words, the term "features" was not limited as far as King was concerned, to comics alone?

A. No, editorial features, columns.

Q. Did King Features license sometimes, as a package, the editorials and columns along with the comic features?

A. Yes.

Q. As a package?

1958 A. As a package.

Q. And, of course, you owned no features and licensed no features?

A. No.

Q. You did printing alone?

A. Alone, just printing.

Q. Did there come a time when you became aware of the fact that King Features was tying in the licensing of features with its sale of printing?

A. Well, we had been aware of it since we started in the business of printing color comics.

Q. Were there times when your customers were told that the price of the features would be increased if they gave you the printing instead of King Features?

A. Yes.

Q. And is that one of the pressures you have to contend with over the years?

A. That is right.

Q. When I say "contend with," when you were competing with King Features for the sale of your printing it was always at the hazard that the newspapers who wanted you to print might have either the features taken away or be charged more for them by King?

A. That was always the hazard.

Q. Was that threat oft repeated?

1959 A. Yes.

Q. By whom?

A. By Mr. Nicht.

Q. To you personally?

A. To me.

Q. What did he say on that subject from time to time?

A. Well, when we would take a job away from King Features, Nicht would tell me, "Those guys are going to pay whatever money we were making on the printing—they are going to pay for it through the features."

Q. Did there come a time—let's approach this openly or frankly—when Nicht began to talk to you about printing exclusively for him or for King Features, of course, or their becoming a sales agent for you?

A. Well, when we bought International Color Printing Company, right at that time Joe Gorman was negotiating a contract, talking to Nicht about a contract for the printing.

Q. Did there come a time when Nicht talked to you on the subject of permitting them to be a sales agent for you?

A. Yes.

Q. By "you" I mean Greater Buffalo Press?

A. Oh, yes. Yes.

Q. It is not a story that I want to develop now.

1960 A. I see.

Q. Will you just do it in your own way?

A. Well, he wanted to be the sales agent. He told us what big things he could do, get this and that and the other paper. As a matter of fact, one of the promises, one of the big promises he held out is that he could get all the printing of the Hearst newspapers or thought he could, and that is the thing he offered to—the advantage that he offered to become exclusive sales agent.

Q. What conditions did he want to impose? Did he ask you to print for him and for him alone?

A. Yes.

Q. And not to print for anybody else?

A. That is what he asked, yes.

Q. I'm putting it in modern language, did you have a flirtation with him on that subject?

A. Well, we sort of went along with his thoughts for a while.

Q. Along in conversation or in action?

A. Well, he outlined what he wanted to do, what we were supposed to do, and I put it in a letter, and these are the things we talked about.

Q. Did he talk to you about each one respecting the other's customers, not soliciting the other's customers?

1961 A. No, I don't think he talked about it in that way at all.

Q. What, in substance, did he state that he wanted?

A. He wanted to become our sales agent. He wanted any new business that continued to exist, he wanted the opportunity to sell it and have it as a King Features contract, to make the money on it that was to be made of the sale.

Q. Did he discuss the matter of eliminating competition? Did he or did he not use those words?

A. No, I don't think so. I don't recall.

Q. You had an exchange of correspondence with Nicht about the possibility of a contract, right?

A. Yes.

Q. And some of those letters are in evidence or at least have been offered, where you say this could be put in a contract or that could be put into a contract. Was that contract ever finalized and entered into?

A. No.

Q. And over a period of time commencing somewhere—well, in what year, 1954 or 1955?

A. 1954, I think.

Q. And continuing for—

A. 1955.

Q. And continuing for two or three years, were you discussing the possibility of such a contract?

A. Yes, several years. We told him no once, he would not accept that, he wanted to go on talking about it.

Q. Did you consider such a contract or arrangement to be in your best business interests?

A. No, it was contrary to our interests.

Q. Did you discuss with counsel the question of whether such a contract would be valid?

A. Discussed it with you, Mr. Raichle.

Q. What were you told?

A. Told that in your opinion there could be questions brought up about it.

Q. Grave questions as to whether or not it might not violate the Anti-Trust Laws, is that it, in substance?

A. Yes.

Q. Was that communicated to Mr. Nicht's counsel?

A. Yes, it was.

Q. And I show you a letter dated October 7, 1958, from Mr. Nicht to you, which I will offer in evidence. There is no objection.

The COURT: Received.

(Thereupon letter referred to was marked Defendant's Exhibit D-4 and received in evidence.)

1963 By Mr. RAICHLE:

Q. Is this a letter you received from Mr. Nicht shortly after October 7, 1958?

A. Yes.

Mr. RAICHLE: May I read it to your Honor, please?

The COURT: Yes.

Mr. RAICHLE: October 7, 1958, it is on the letterhead of King Features: "Dear Mr. Koessler: I regret to tell you that the agreement which we sent to you under date of July 31 has been disapproved by Mr. Berlin. In view of this fact I am sure that our board will not approve or ratify it. Therefore I must ask you to consider it to be no agreement. Yours truly, Frank J. Nicht."

By Mr. RAICHLE:

Q. I show you another letter, dated October 13, 1958, purporting to be an answer to that letter from you to Mr. Nicht.

A. Yes.

Mr. RAICHLE: I offer that in evidence.
1964 (Thereupon letter referred to was marked Defendant's Exhibit D-5 and received in evidence.)

By Mr. RAICHLE:

Q. Is this a copy of a letter that you wrote to Mr. Nicht acknowledging receipt of his letter?

A. Yes.

Mr. RAICHLE: May I read this to your Honor?

The COURT: Yes.

Mr. RAICHLE: It is on the letterhead of Greater Buffalo Press: "F. J. Nicht, King Features. Dear Frank: I have received your letter of October 1, 1958, in reference to the agreement that you sent me July 31, 1958, and have noted its contents. I have had no opportunity to present this agreement to our Board of Directors for their approval. Upon receipt of your letter, I presented it to an informal meeting of our Directors and they disapproved. Since the agreement has not been approved and cannot be approved by either corporation, 1965 it must be considered void and no agreement. J. Walter Koessler, President."

By Mr. RAICHLE:

Q. That terminated, did it, the business or the talk about King being a sales agent for Greater Buffalo Press?

A. Right.

Q. Now, Greater Buffalo Press at all times has printed for every customer it could get, right?

A. That is right.

Q. Printed for King, printed for NEA, printed for the other newspapers and the other people we have talked about, right?

A. Other syndicates, too.

Q. Other syndicates too. While we are on the subject, what are some of the other syndicates?

A. Chicago Tribune Syndicate, United Features Syndicate. That covers it.

Q. These last two that you have mentioned are similar to King Features and NEA?

A. Yes.

Q. Down through the years you have printed for all of them?

A. All of them.

Q. At all these plants of yours?

1966 A. That is right.

Q. And you never became King's exclusive printer?

A. No.

Q. Then King never became your sales agent?

A. No.

Q. You have competed with King down through the years to the utmost of your ability, have you?

A. Yes.

Q. Even against this tie-in practice of his, and the pressure and harassment of your customers by threats of increased prices for features—

A. That is right.

Q. —if you did the printing?

A. Right.

Q. Or got the business?

A. Yes.

Mr. RAICHLE: I now offer it in evidence, the answer of the defendant Hearst to interrogatories dated April 28, 1964, served on it by the Plaintiff.

Mr. BERNSTEIN: No objection.

The COURT: Received.

Mr. RAICHLE: Mark the interrogatories D-6A and the answer D-6B.

1967 (Thereupon documents referred to were marked defendant's Exhibits D-6A and D-6B and received in evidence.)

Mr. RAICHLE: It is Interrogatory Number 1 that we are particularly concerned with at the moment. The Interrogatory asks there be set forth the names of such newspapers which had color comic supplements furnished them pursuant to written contracts entered into with King Syndicate, and which contracts in the period of 1954 to the present—that is April 28, 1964—were cancelled, terminated or otherwise not renewed by reason of such newspapers entering into contracts with Greater Buffalo Press, Incorporated, or any of its subsidiaries, affiliates, and the dates thereof. In other words, a list of those we took away from Nicht, and the Answer furnishes that information.

By Mr. RAICHLE:

1968 Q. During the time of these negotiations, or whatever you want to call them, when Nicht was pressuring you to

permit him to become the—his organization to become the sales agent and for you to print exclusively for him or for them, were you taking customers away from him as best you could?

A. Yes.

Q. And I notice this Interrogatory-Answer, Exhibit B, it says here that on the 25th of December 1955 you took eight or nine customers away from him?

A. Yes. That wasn't a very good Christmas present, was it?

Q. At any rate, in 1958 you took some, in 1957 you took some, in 1956 you took some?

Mr. BERNSTEIN: Excuse me, your Honor, but I am having difficulty following this. Which Interrogatory and which Answer are you referring to?

Mr. RAICHLE: Number one.

By Mr. RAICHLE:

Q. This shows the result, in part, of your competition with him—

A. Yes.

Q. —which continued during the period of the flirtation or negotiations, right?

1969 A. Yes.

Q. During this period of negotiations something comes up about the Gannett Papers, Utica and Binghamton—

Mr. BERNSTEIN: Before we go any further, your Honor, I move the last answer be stricken on the grounds that Interrogatory Number One, the Answer, shows the dates of '59, '58, '57 and '56. The witness' testimony was that the discussion or the flirtation, as Mr. Raichle described it, terminated with the date of the letter exchanged between the parties, and the Answer to the Interrogatories show newspaper contracts cancelled in 1963 and 1964. So Mr. Raichle's question included periods beyond the flirtation period and the answer, by saying yes, adopted that. I move it be stricken.

The COURT: That was some formal agreement presented between them, that was terminated. I don't think there is anything said here that there might not have been some passes made thereafter. Overruled.

1970

By Mr. RAICHLE:

Q. What is this about Utica and Binghamton? Do you want me to ask the questions or do you want to tell it? Let me put it this way, did there come a time when the Gannett

Papers decided not to print their Sunday comics, at least in Utica and Binghamton?

A. Yes.

Q. Were you in communication with the Gannett people about the business?

A. Yes, the Gannett Papers communicated with us about it.

Q. What was the name of the man that communicated with you?

A. Bitner.

Q. All right.

A. He was the general manager.

Q. What took place?

A. He called me down to Rochester and told me that the Gannett Papers were going to discontinue printing their own comic sections for Utica and Binghamton. At the present time we were printing the Gannett Papers, the Rochester Democrat and Chronicle. He wanted me to put in a price on it. I did put in a price on it, both of them, the Utica and the Binghamton papers. Mr. Bitner was a customer of ours and I felt obliged at that time to point out to him that while our printing price would be low, we hoped it was, that Binghamton was 45 miles away from Wilkes-Barre and that Binghamton had a very difficult receiving arrangement, we had talked about it before, there was an old plant backed up in an alley and you could not deliver these comic sections to them in an over-the-road carrier, they had to be brought to Binghamton, transferred to another smaller truck and bring them in. As a result, there was a very, very expensive transportation cost involved, and King Features—or International, rather, were close by and I knew that their transportation cost would be much lower than ours. So I told Bitner about it, he was going to find out anyway, I might as well give him the facts.

Q. You thought it was good business to please your customer?

A. Good business to tell him the truth and all the facts connected with it.

Q. Did you get the Utica business?

A. We got the Utica business, yes. At that time he told me to prepare to print the Utica section.

Q. And Binghamton is about how far from Wilkes-Barre?

A. About 45 miles.

Q. And did International get the business in 1972 Binghamton?

A. Yes.

Q. This was before you bought International?

A. Right. King Features got the business.

Q. King Features, but International did the printing, right?

A. Yes.

Q. There is another spook they dredge up here called Waterloo, Iowa. What in the world is that?

A. That is a little paper in Waterloo, Iowa.

Q. How big is its circulation?

A. About 50,000. It was new, they were starting a new Sunday paper.

Q. What is the story there?

A. Well, we found out about it—I don't know—anyway, we were the first to know about it. I talked to the editor of the Waterloo paper, a fellow by the name of McCoy and he told me that they were having a great amount of difficulty in getting features for this comic section, the whole state of Iowa was tied up in one paper, the good features of the whole state of Iowa were tied in by the Des Moines Register Tribune.

Q. Tied up from whom?

A. Tied up by the newspaper, by Des Moines, from the syndicates, the syndicates agreed to sell Des Moines.

Q. Including King Features had agreed?

1937 A. Including King Features. Including rights for the whole state of Iowa, the whole state. He could not get any features. He could not get the good features. He said his greatest problem was getting features. I suggested to him—what he had in mind was an eight-page section—first of all, to cut the section to six pages and he wouldn't need so many features.

Q. He wouldn't need so many pages if he could not get the features?

A. That is right. Also, we were better set up to set six pages than was International Color Printing Company, or any other printer, for that matter, we would have a better competitive position on printing six pages, and he accepted the idea for a six-page section. In the meantime, I wrote a letter to all the syndicates telling them that this man out in Iowa was going to print a Sunday paper—he asked me to do it, as a matter of fact,

to tell them he was looking for features and to communicate with him.

Q. Did he get the features?

A. He never got the ones he was supposed to get. He got some additional ones.

Q. Then how is this \$50 business? Does this involve the \$50 business?

A. Yes.

1974 Q. How does that come about?

A. Well, I wanted Nicht—I asked Nicht to give this guy some features. He said they are pretty well tied up with Des Moines. He said, "To give him any features, first of all, I have to take them away from Des Moines, I lose the revenue there, and I want to get some money if we are going to do it."

Q. He shook you down for \$50?

Mr. BERNSTEIN: I object. Can we have the witness testify? He is doing very well.

Mr. RAICHLE: I'll say he is.

By Mr. RAICHLE:

Q. Go ahead.

A. He shook me down for \$50.

Q. That is what my friend likes to call a kick-back. That is Waterloo. Now, let's see what else we got. Did you ever have any business with Eastern Color of any kind or character?

A. No.

Q. They are named as a co-conspirator in this litigation. Did you ever buy anything from them or sell anything to them?

A. No. We took the Boston Globe Newspapers—they
1975 are closer to it than we are—we got it.

Q. You competed with them and got the business?

A. Yes.

Q. Did you ever conspire or agree, combine with them on any subject?

A. Never talked to them.

Q. Did you ever write to them?

A. No.

Q. Then you never conspired, you never agreed with them on anything?

A. Never discussed anything like that with them.

Q. When did this Hornaday outfit go into business?

A. Oh, they were in business right after the war, I think '48, '49, they started in.

Q. What is their name?

A. Southern Color Print.

Q. They are still competing with you?

A. Yes.

Q. Is Acme still competing?

A. Yes.

Q. Eastern is still competing?

A. Yes. World Color is still competing.

Q. All right. Now——

The COURT: Excuse me. Where does Southern Color Print get its paper from?

The WITNESS: They buy it from Canada.

1976 They don't have this Coosa River source?

The WITNESS: No.

By Mr. RAICHLE:

Q. While we are on the Coosa River source, I think I confused you about one thing, would you tell us briefly, you had a proposal at one time from this fellow Watt?

A. Right.

Q. And was it abandoned and later revived, or what happened to that?

A. Watt withdrew it. He made it and withdrew it.

Q. This was when?

A. This was in 1954 or 1955. 1955, I think.

Q. What was the proposal that he withdrew?

A. The offer he originally made to us, he withdrew it and gave it to King Features, made it to King Features.

Q. First he made it to you and then King?

A. Right.

Mr. BERNSTEIN: What offer?

By Mr. RAICHLE:

Q. The one to build the plant?

A. Yes.

1977 Q. All right. After some intervals of—how long?

A. Oh, months. He made the offer to me, I think, some time in the spring, early spring, early summer, and he withdrew it in the fall, as I recall it, a few months later.

Q. Did he come forward with another proposal?

A. Watt?

Q. Yes.

A. To us?

Q. Yes.

A. No, not until after we—Watt was never in the picture after that.

Q. Did somebody else in Coosa come to you?

A. No, nobody from Coosa, but we started off on our own. We went down to the Beauwater Paper Company, which was up in Tennessee outside of Chattanooga, and they had started in the paper business and——

Q. Then you went back somehow and you made a deal with Coosa?

A. The paper company, yes, after we got the plant in Sylacauga built and ready to run.

Q. You made a deal with Coosa?

A. Yes.

Q. But you built the plant yourself?

A. Right.

1978 Q. All right. Well, now, let's talk about NEA. You have had business relations with NEA over what period of time?

A. Oh, through the '30's, the late '30's, the '40's, the '50's.

Q. And in those years did you print for NEA?

A. Printed some things for NEA, yes.

Q. Did you also compete with NEA?

A. Yes.

Q. And did there come a time when you made an acquisition of something called Buffalo Color Press?

A. Yes.

Q. What was that?

A. That was a color operation that——

Q. Here in Buffalo?

A. Here in Buffalo.

Q. Was it a small operation?

A. Yes, an old, dilapidated organization.

Q. Did you buy that from NEA?

A. Yes.

Q. For how much?

A. \$25,000.

Q. And how did that come about?

A. Well, it got in such bad shape they couldn't run it any more, they wanted to get rid of it, and we were doing
1979 some printing for NEA—NEA controlled the printing of the Scripps-Howard newspapers, for one thing—and we were doing the printing for them, and they also did a small

amount of printing in this Buffalo Color Press, and we agreed to buy the Buffalo Color Press and print for NEA what they were presently printing or printing at that time at Buffalo Color Press.

Q. What year was this?

A. 1955.

Q. All right. Of course, you were in touch with NEA in the conduct of your business and you were in touch with King Features, right?

A. Yes, sure.

Q. You knew the personnel of both outfits?

A. Sure.

Q. And did you hear complaints of one against the other, and so forth?

A. Yes.

Q. You were competing with both of them?

A. Right.

Q. And much has been made of some so-called Beverly Hotel meeting in New York where you introduced King to somebody in NEA. What was there to that?

A. Mr. Walker, who is the General Manager of NEA 1980 and, I think, the President, used to complain to me about

King Features replacing them as printers, replacing them as printers by introducing the King Features into the newspapers. When he would sell the features the newspapers would lessen the cost of printing the sections because part of the make-ready then King would have, and he was taking business away from NEA that way, and Walker was complaining about it, and I told him, "Why don't you go down and see Nicht?" He never met Nicht. He said, "Will you introduce me?" I said, "Yes, I will."

Q. Did you introduce the two of them?

A. Yes.

Q. Did you ever enter any conspiracy, combination——

Mr. BERNSTEIN: I object, your Honor.

Mr. RAICHLE: To what?

Mr. BERNSTEIN: To the form of the question.

Mr. RAICHLE: You haven't heard it.

Mr. BERNSTEIN: We are talking about conversations with people. I think this is a sensitive part of the case. I think the people should be identified, the place identified, and leading

1981 questions from counsel to this witness should not be permitted.

The COURT: Have him testify as to what happened, who was there.

Mr. RAICHLE: Exactly what I was going to do, Your Honor.

The COURT: I understand.

Mr. RAICHLE: I was going to have him deny the charge of conspiracy. Under the rule of the cases we are required to do that.

The COURT: Let's have the conversation first, culminated with the statement as to the conspiracy or lack thereof.

By Mr. RAICHLE:

Q. Was there any more to the conversation with which you had to do?

A. Nothing more than that I would introduce——

Q. Did you introduce him?

A. Yes.

Q. When and where?

A. In New York. I don't remember the date but Walker came down. It was in Walker's room in the Beverly Hotel. I called Nicht up and said Walker was in such and such a place, "He would like to meet you, will you go to see him?" He said yes, he came to see him.

Q. You introduced the two?

1982 A. Yes.

Q. Did you stay throughout the meeting?

A. No. As I recall it, there was a man in there talking to Walker at the time from the Cleveland Plain Dealer and I walked out when he did.

Q. Have you told us all that you remember that took place?

A. Yes.

Q. Did you enter into any conspiracy, combination, or agreement with Nicht or with Mr. Walker or with King Features or NEA to allocate customers, refrain from soliciting customers of either, or anything of that character?

A. No.

Mr. RAICHLE: I am trying to comply with the rules of the Interstate Case.

The COURT: I understand that.

By Mr. RAICHLE:

Q. Did you ever enter into a contract, combination or conspiracy, or any agreement with King Features, with NEA, or

with anybody else, to refrain from soliciting color comic supplement printing business from the customers of any such persons?

A. No.

Q. You have in mind that you were negotiating a contract that came near doing some of those things but that the negotiations were terminated?

A. Right.

Q. Did you ever enter into any combination, conspiracy, agreement or understanding to maintain and stabilize the price of color comic supplemental printing in the United States or anywhere else?

A. No.

Q. Did you ever conspire with those I have named, or with anybody else, to monopolize trade and commerce in color comic supplements?

A. No.

Q. Has the acquisition of the stock of International Color Printing by Greater Buffalo Press resulted in or, in your opinion, will it result in a lessening of competition, or have a tendency to create a monopoly with respect to color comic supplemental printing?

A. No.

Q. Are you in active competition today with those we have mentioned?

A. Yes.

Q. King Features and NEA?

A. Yes.

Q. Eastern Color?

1984 A. Yes.

Q. And the many others you have mentioned, Southern Color?

A. Yes.

Q. Acme?

A. Yes.

Q. World?

A. Yes.

Mr. RAICHLE: You may ask.

The COURT: Well, now, I think we will recess. I would like to start at a quarter to two, that will give us a good hour for lunch, and then you may resume your cross examination.

(Thereupon the court was in recess at 12:40 p.m.)

1985 (Proceedings resumed, pursuant to recess, commencing at 1:45 p.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, in your testimony this morning you referred to a conversation with Mr. Bitner of the Gannett Papers?

A. Yes.

Q. And I believe that you said that he phoned you to advise you—what did you say again, what did you tell us about Mr. Bitner's conversation?

A. My recollection is that he called Buffalo and asked me to come to Rochester to discuss this printing.

Q. Did you go?

A. Yes.

Q. And did you—when was this approximately?

A. Approximately at the end of 1953, the first part of 1954. Wait a minute—the latter part of 1954—1953 or 1954.

Q. Do you recall discussing this at all with Mr. Nicht?

A. What?

1986 Q. Do you recall discussing your conversation with Mr. Bitner with Mr. Nicht?

A. After I seen Bitner?

Q. Yes.

A. Yes.

Q. I show you Exhibit P-10, which purports to be a memorandum from Mr. Nicht of a telephone conversation with you. I ask you to please read that and state whether or not that reports your conversation with him?

Mr. RAICHLE: It doesn't purport to be a transcript of a telephone call, it is something he dictated afterwards.

The COURT: He asked him a question; does it purport to be an accurate memorandum of the call. You do the best you can, Mr. Koessler, to recall what was said.

The WITNESS: I remember this. Wait until I read the second paragraph. The first paragraph is all right. The second is not correct.

By Mr. BERNSTEIN:

Q. The first paragraph says: "Walter Koessler phoned me early this morning from Buffalo. He told me he had
1987 seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica."

A. Right.

Q. "At the same time he told me that he discouraged Bitner from having Greater Buffalo print the Binghamton Press run, saying King Features could handle that better than he could."

A. Right.

Q. "Koessler told me that Bitner replied, 'That's the way I would like it.'"

A. That is right, except it isn't complete.

Q. What will complete it?

A. We put in a price both on Utica and Binghamton.

Q. Did you tell Mr. Nicht that?

A. What?

Q. Did you tell that to Mr. Nicht?

A. I think I did, yes.

Q. And now Mr. Nicht says: "Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses but he didn't think they were worth much." Do you recall that?

A. I don't recall that, but I do remember we bought the presses, so that this is wrong.

Q. You don't recall saying this to Mr. Nicht?

A. I may have said that, yes, they were not worth
1988 much, yes. I didn't convey the idea we were not going to buy them, we did buy them.

Q. This sentence says: "Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses——", that part of the sentence is true, is that correct?

A. Yes.

Q. Then he said: "—but he"—referring to you—"didn't think they were worth much." Is that wrong?

A. That could have been so.

Q. You might have said that to Mr. Nicht——

A. Yes.

Q. Regardless of what the fact was?

A. Right.

Q. Then the next sentence he said: "At least, he couldn't use any of them;" you don't—

A. I didn't tell him that. I may have told them they were not worth much, they weren't.

Q. "Later I told Mr. Gorman about this and he was not interested in the presses."

A. I don't know what he told Gorman.

Q. No, do you know whether you told that to—I see, excuse me, I beg your pardon. I withdraw the question. You have no knowledge of what Mr. Nicht might have told Mr. Gorman?

A. No, and didn't then.

1989 Q. At that time had you met Mr. Gorman?

A. Yes.

Q. In January of '54?

A. No, I'm sorry, I don't think I had met him at that time. It was some time after that.

Q. How did you meet Mr. Gorman?

A. How did I meet Mr. Gorman? Mr. Nicht introduced me to him.

Q. And where was this?

A. I think it was in New York.

Q. At a hotel in New York?

A. He sent me to a hotel.

Q. He meaning whom?

A. Nicht told me Gorman was over at the Biltmore Hotel.

Q. Do you recall having lunch with Mr. Nicht and Mr. Gorman in New York?

A. At some time.

Q. I mean at the first meeting?

A. No, I don't recall that.

Q. You don't recall that?

A. No.

Q. Do you recall after lunch leaving and going to a hotel with Mr. Gorman?

A. I recall meeting with Mr. Gorman in the Biltmore Hotel in New York City, but subsequently—not having lunch with him, meeting him at the hotel, and it was my first time personally meeting Mr. Gorman. It wasn't at lunch, I hadn't met him at lunch.

1990 Q. Now, Mr. Koessler, referring back to P-10 that you have in your hand, Mr. Nicht reports: "Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages

at Utica and this is something we may be able to use to advantage." Do you recall that?

A. Yes.

Q. Then, do you know anything about the last sentence, "Mr. Hagan, I believe, has an appointment here in New York——"

A. No.

Q. You know nothing about it?

A. No.

Mr. BERNSTEIN: I offer P-10 in evidence, your Honor. I might add, your Honor, this is one of the documents that the Court has taken under advisement.

The COURT: I remember that.

Mr. BERNSTEIN: I reoffer it now.

The COURT: Same ruling, I will consider it further.

1991 Mr. RAICHLE: Subject to the same objection.

Mr. BERNSTEIN: May I say, in order to save time, the Plaintiff offers or will offer other documents like this, but in order to save time and save the offer, the Plaintiff will make the offer at the completion of all of the cross examination of all of the witnesses so that we can discuss it, rather than do it on an individual basis, unless your Honor would prefer to have it on an individual basis.

The COURT: You better specifically take it up from time to time, as you have just done, and I will dispose of that in due course. It may be that you will wish further argument on it. All right.

By Mr. BERNSTEIN:

Q. Now, do you recall having a conversation with Mr. Nicht about the Waterloo, Iowa situation in and around January 14, 1954, and I show you Document No. 258, which hasn't as yet been offered as an exhibit—strike it out. I ask the Clerk

1992 to mark for identification P-70.

(Thereupon document referred to was marked Plaintiff's Exhibit P-70 for identification.)

The COURT: If I remember, the serious side of the argument against that, that series of letters, such as P-10, was that I think Mr. Raichle contends that they did not constitute any book entries or business records of the corporation, but were some type of private memo of Nicht's. I don't want to get into that now but it is something I will take up again and thresh out with you.

Mr. BERNSTEIN: I understand.

The COURT: All right.

Mr. STEVENS: May I see that?

By Mr. BERNSTEIN:

Q. I show you P-70 for identification. This purports to be a transcript of three phone conversations between Mr. Nicht and yourself. I would ask you to please read just—

1993 Mr. RAICHLE: I don't like to interrupt, but it isn't any such thing.

Mr. BERNSTEIN: Excuse me. I offer in evidence—

Mr. RAICHLE: Just a minute, will you please? You said it was a transcript or purports to be a transcript of a telephone conversation. It is no such thing, it is a purported partial transcript of one side of a telephone conversation.

Mr. MOORE: As testified to by the witness.

Mr. RAICHLE: That is what the witness testified to who identified it. Am I not right?

Mr. BERNSTEIN: I offer in evidence—

Mr. RAICHLE: Am I not right?

Mr. BERNSTEIN: I will clarify that.

Mr. RAICHLE: Won't you admit that I am right?

The COURT: Look, are you going to strike the question as far as you have gone? You withdraw that?

Mr. BERNSTEIN: I withdraw the question. I offer in evidence pages 55 through 58 of Mr. Nicht's deposition, and I represent to the Court that in those pages Mr. Nicht identifies the memorandum and he says—question on page 56:

1994 "Q. Would you please tell us how this transcript was made, that is, if you know?

"A. I don't recall that.

"Q. Did you—

"A. Probably my secretary.

"Q. When you say your secretary, did you commit this to writing here or did you direct it to be committed to writing, the writing which appears on these two pages?

"A. I think so."

Then he states this is the result of the initials of M.L. on it, that stands for his secretary, and he is asked:

"Q. When you say your secretary committed it to writing do you recall now whether someone was listening in or whether some type of device was attached to the phone to record the pur-

ported three conversations between you and Walter Koessler, do you recall what happened?

"A. No.

"Q. Did you use a Dictaphone and record the words 1995 you spoke and the words Mr. Koessler purportedly spoke?

"A. I don't know just how that was.

"Q. Going back to 1954, what was your practice then, did you just record what you were saying on the phone, or was there a Dictaphone recording the other conversation also?

"A. We had no Dictaphone recording.

"Q. Referring now to Plaintiff's Exhibit 3"—which is now P-70—"—what does that represent, I would like to know the mechanics?

"A. I would say notes on the conversation between Mr. Koessler and myself.

"Q. Would these be notes that you took or notes that your secretary took?

"A. They would be both. They might be notes I take or she might have taken.

"Q. Does it indicate to you that if the secretary took the notes she was listening in on the phone conversation?

"A. Yes."

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, would you please read the first 1996 paragraph to yourself?

Mr. MOORE: Wait a minute. You have offered in evidence this part of Nicht's deposition. I take it you offer this as substantive proof in this case?

Mr. BERNSTEIN: That is correct.

Mr. MOORE: May we read the pertinent parts?

The COURT: There is no question. I am going to allow a full disclosure. If there is something more—

Mr. BERNSTEIN: The Plaintiff has no objection to putting the entire deposition in.

Mr. MOORE: We do.

The COURT: I don't want to read the whole thing, except as it pertains to this. You can screen it out, that is what I would like.

Mr. MOORE: I have one line I want to read. Referring to page 59, line 20, which you left out: "Referring to Plaintiff's Exhibit 3"—which is the document you have marked for identi-

fication—"what does this document represent?" "A memo of the conversation or conversations I had with Mr. Koessler."

Mr. BERNSTEIN: And I read the next line:

"Q. When you say memo, is that summarizing it, or are these the exact words that would have been uttered in that conversation?

"A. I would say it is a summarization or condensation.

"Q. Were these summaries or words committed here taken during the conversation?

"A. I think so."

Mr. MOORE: Read on.

Mr. BERNSTEIN: All right.

"Q. Or did someone, to your knowledge, rely upon their memory after the conversation and commit it to paper?

"A. It could be both.

"Q. Going back to the period around this time, namely 1954, what was your policy in regard to telephone conversations and reporting them, did you write memoranda after telephone conversations at that time?

"A. A good many of them, not all of them.

"Q. Did you invite other people to listen to such conversations?

"A. Once in a while my secretary.

"Q. Referring to these three telephone conversations purportedly made between you and Walter Koessler; what does this paper, which you say you had committed or had typewritten at your direction, what exactly does this represent? Does this represent your writings after a telephone conversation or does it represent the writings of someone who listened in during the telephone conversation?

"A. It could be both, but principally somebody else.

"Q. When you say someone else, based upon your present recollection of what took place around 1954, what was it, yours or someone else's?

"A. Someone else's.

"Q. When you say someone else, what did you say that indicated to you that someone else listened in on the telephone conversation or that you told the person"—

Then there is an objection and then the question—

"Q. You say, Mr. Nicht, that Plaintiff's Exhibit 3"—which is now P-70—"would be your version or summary of a tele-

phone conversation after it took place or it would be someone else's version, is that correct, or summary committed to paper?

"A. Yes.

1999 "Q. What is it, is it yours? Can you tell us no whether it is yours or whether it was someone else's, both, based upon the initials M.L. appearing at the end here?

"A. Someone else's.

"Q. You say it was someone else's and not yours, is that correct?

"A. Yes.

"Q. Do you know how that person received the information or received information relating to the substance of the conversation, of the purported conversation, committed to paper on Plaintiff's Exhibit 3?

"A. On an extension telephone.

"Q. Do you know whether or not the person so listening used any additional devices merely than listening in?

"A. I don't know.

"Q. When you refer to an extension telephone, do you refer to a telephone or some device whereby the person can listen in to what you said and what the other person said?

"A. Both.

"Q. In other words, the person using the extension telephone would be able to hear both parts of the conversation, is that correct?

"A. That is correct.

"Q. Do you recall now what took place on or about January 14, 1954, in regard to the telephone conversation reported in Plaintiff's Exhibit 3?

"A. Do you want me to read that?

"Q. No, no, I just want to know the device, whether the person using the extension telephone heard both parts of the conversation, that is, what you said and what the other party said?

"A. It would be possible.

"Q. When you say it would be possible, based upon your experience and also your present recollection, what actually took place?

"A. What would take place on an extension telephone, suppose they could hear the incoming conversation.

"Q. Referring to Plaintiff's Exhibit 3—"

Mr. RAICHLER: This is the \$64 one, read this one.

Mr. BERNSTEIN:

"Q. Referring to Plaintiff's Exhibit 3"—now P-70"—does this report both sides of the conversation, or does it only report one side of the conversation, or don't you know?

2001 "A. I'm not sure of it, it looks like one side.

"Q. You say one side; whose side would that be; your side of the conversation or the other party named on top of Plaintiff's Exhibit 3"—now P-70—" namely, Walter Koessler?

A. It is my side, yes.

Q. In other words, Plaintiff's Exhibit 3 "—now P-70—" to your best recollection now represents one side of the conversation, the exhibit purportedly records a conversation between you and Walter Koessler, is that correct?

"A. Yes."

The COURT: Of course, it is what he said.

Mr. BERNSTEIN: That is right.

The COURT: What Nicht said.

Mr. BERNSTEIN: What Nicht said to Mr. Koessler.

By Mr. BERNSTEIN:

Q. I now ask Mr. Koessler to please read that. I ask you this question, have you had the opportunity to read the first paragraph to yourself?

A. Yes.

Q. Now, does this refresh your recollection as to what Mr. Nicht said to you as to that telephone call?

A. I recall a conversation with Mr. Nicht.

2002 Q. Do you recall that he said: "Hello. I will tell you what it is about. Waterloo. Have you heard anything more, and I will tell you everything I know. I got a man out there and we're not working at cross purposes and we're not going to." Do you recall that?

A. He might have said something like that.

Q. "Apparently they have decided on an eight-pager, having discarded the idea of a six-pager." Is that correct?

A. That is what he said, that isn't what the facts were.

Q. The facts were as you testified this morning, that you had persuaded them to use six pages rather than eight because they would get less features?

A. And they did use six pages.

Q. Mr. Nicht did say to you at that time——

A. I don't know, I have some recollection of it, yes. Go ahead. He may have said it.

Q. You have no reason to doubt that he said it?

A. I don't know. He could have or could not have.

Q. "He said: 'Now we haven't put in a bid and we may or may not, but the Barrick people in Kansas City are in this picture through NEA.' "

A. They were a color printer in Kansas City, working with NEA.

2003 Q. They were working with NEA at the time?

A. Not working for NEA, working with NEA.

Q. Do you recall whether Mr. Nicht said to you: "Now we haven't put in a bid and we may or may not, but the Barrick people in Kansas City are in this picture—"?

A. He could have. I didn't believe him.

Q. Do you recall whether he said: "Whether they will bid hell out of it, I don't know, and between us I don't care."?

A. I don't know. What difference does it make?

Q. Then he said: "I want to be guided entirely by what you suggest now. We talked about this in the beginning, so basically our minds meet, but what suggestion have you got to make?" What about that, is that accurate or inaccurate?

A. I don't know. Let me go over this. "What suggestion have you got to make?" We didn't make any.

Q. He said he wants to be guided entirely by what you suggest now?

A. My recollection is we didn't make any suggestion.

Q. Is it your recollection that he asked you that?

A. He could have.

Q. He said he talked to you about this in the beginning. Do you recall now whether you had a conversation with him earlier than this?

2004 A. Yes, we had some conversation about these features that this Iowa paper was trying to get.

Q. So when he said: "Basically our minds meet," did your minds meet on that?

A. No.

Q. They did not?

A. Well, he could not—he didn't or couldn't supply them the features they wanted. It wasn't my mind meeting, it was his mind and Mr. McCoy's mind, of the Waterloo paper, meeting.

Q. In any event, I understand that he shook you down for \$50?

A. Exactly.

Q. Is that the only time he ever shook you down?

A. No.

Q. Tell us about the others?

A. I can't tell you, innumerable times. He shook us down on the Harte-Hanks papers, for one.

Q. Any papers printed down in Lufkin, Texas?

A. Yes, the Harte-Hank papers.

Q. Any others?

A. The Shreveport Times.

Q. Any others? How about the Buffalo News?

A. Yes, the Buffalo News.

Q. And on the Buffalo News how did you make that payment to him?

A. How?

Q. Yes.

A. Every week he sent us a bill for it.

Q. What did he charge on that bill, what did he say? Did he say that this would be for special mat services?

A. On the Buffalo News.

Q. Yes.

A. No. What are you talking about, Waterloo or the Buffalo News? No, he didn't say that on the Buffalo Evening News.

Q. Did he say it on any—

A. He said it on the Waterloo mat.

Q. What did that mean to you?

A. What did it mean to me? That we were paying for the features that he was going to release from Des Moines and give to Waterloo.

Q. And you were going to pay that on an invoice which said what?

A. Mat services.

Q. What does that mean in the printing business?

A. Well, the syndicates supply the printer with mats, and that is part of their service. They shouldn't be charging for it but that is the way he wanted to bill it, that was his idea.

2006 Q. Let me understand this, Mr. Koessler; let's take a non-shakedown case. When you do printing for a syndicate, is it customary in the business for the syndicate to supply the printer with a mat?

A. If the printer hasn't already got the mats, yes, it is part of their business, part of the service.

Q. So then if you were to commence printing for a newspaper that had formerly printed its own and then had gotten some new features from a syndicate that it had not printed, Greater Buffalo would expect to get the mats from the syndicate, is that right?

A. If we didn't have it.

Q. Is that free of charge to the printer or does the printer pay for it?

A. The printer doesn't pay for it, the syndicate supplies it to the newspapers, part of the charge to the newspapers.

Q. So when King, on the Waterloo paper, sent you an invoice for mat services, that appeared to be an invoice for providing a mat to you, is that correct?

A. That's what it is supposed to indicate.

Q. Did you go along with that?

A. I knew what it was for.

Q. What was it for?

A. It was for supplying these features they couldn't
2007 get otherwise.

Q. You went along with it to the extent of authorizing the payment by Greater Buffalo?

A. If we didn't Waterloo wouldn't get the features, we wouldn't have the printing job. That contains the idea of the shakedown.

Q. I want to get—I want the record and the Court to find out whether the payment was actually made——

A. Yes.

Q. It was made through Greater Buffalo's books as if it were that Greater Buffalo had received a mat and paid for it, is that correct?

A. We paid it the way they invoiced it.

Q. That was for mat service?

A. That is right.

Q. Now——

A. Are you through with that?

Q. No.

A. Can I ask you some questions?

Q. No, you will have an opportunity, Mr. Koessler——

A. It is still part of this thing——

Q. I will give you an opportunity to give us your best recollection on this. Might I say, Mr. Koessler, when I am through cross examining, Mr. Raichle has the opportunity to

2008 come back and clarify anything. I don't intend to mislead you, I want to get the facts, I want all of the facts. Now, I show you a memorandum—strike that out. Going back to P-70, there is a reference made in the first paragraph to the man that Nicht had calling on the Waterloo, Iowa paper?

A. This here?

Q. Yes.

A. Yes. Go ahead.

Q. Who was that?

A. I don't know, I never heard of the man.

Q. He said: "What do you mean? Our man? His name is Alofsin. He is Al's son." Do you know—

A. I didn't know Al's son.

Q. Do you recall that he told you that in that conversation?

A. He could have, yes. He must have. I asked the question who was—apparently asked the question, "Who is this man?" I didn't know him.

Q. And when he told you that he is Al's son, what did that mean to you?

A. Al was his father.

Q. Al who?

A. Alofsin.

Q. You knew Al Alofsin?

2009 A. Many years.

Q. You do recall now that Nicht identified Al Alofsin's son as having been the person who was calling on the Waterloo newspaper?

A. Yes.

Q. He told you that in his conversation?

A. I recall after reading that.

Q. You do recall?

A. Yes.

Q. Thank you. Now, the next sentence, he said: "Apparently it's young Bob McCoy, son of the owner or former owner. Is that the guy you are dealing with?" Do you recall whether he asked you that question?

A. He could have.

Q. Then Mr. Nicht says: "He says—" —that is referring to Bob McCoy—"in addition to Greater Buffalo, he has also asked and received a quotation from NEA." Do you recall whether he told you that?

A. That may be so.

Q. Do you recall whether he told you this: "We have told our man to hold his horses until he hears from us further. Now, how are we to coordinate this?", do you recall that?

A. He could have.

Q. Do you recall him saying that?

2010 A. He could have.

Q. He said: "Yes. Well, I think so long as we're working together on this. Or could we do it 'bass-ackwards'—"

A. Where are we at?

Q. Second paragraph.

A. You didn't ask me that.

Q. Excuse me, read that paragraph.

A. Where are we going?

Q. Read the second paragraph, please.

A. Go ahead.

Q. Do you recall whether he said: "Or we could do it 'bass-ackwards' and if it wound up that we could have it, we could reverse the procedure. You see what I mean?"

A. I didn't see what he meant. He may have said that. I didn't know what he meant. What do you think he meant?

Q. I don't know. He said to you: "You will call him, eh? Well you could, but in such a way as to have him realize there is no connection between the two of us. Don't you think so?" Do you recall him asking you that?

A. He may have said that.

Q. Then he said: "Yes, you do it on your own." Then 2011 he asked you this question: "What do you think you would quote on an eight-pager?" He said: "Well, you are going to call him. Okay, I will be here until four thirty. All right, Walter." Do you recall whether he said that?

A. It could be so.

Q. On the next line—will you read the next paragraph, that purports to be another conversation.

A. Let's put it this way, Nicht was talking to me in the first two paragraphs, he asked me to call him back.

Q. What did you say to him?—I will withdraw the question I have just asked you—what did you say to him in response to these questions?

A. I don't remember.

Q. Let's take the second paragraph—

A. I don't know if I said anything. He was a guy that did all the talking, it was hard to give him an answer.

Q. Let's look at the last paragraph on that first page. That is another phone conversation. Please read it to yourself and see if that refreshes your recollection.

A. The last paragraph starting with "hello"?

Q. "Hello", yes. "Well, now wait a minute, you are talking about an eight-page and this is a six."

A. I was supposed to be talking to him but he is asking the questions.

Q. That is right. He said: "This is a six-page standard. Yes, I know." Had you told him it was a six-page that you were dealing with?

A. No, I don't think I did.

Q. All right. He said: "Fifty. 11.14." Do you recall whether he said that to you?

A. Yes.

Q. What does that mean?

A. That meant the price we were supposed to quote on this. What price were we going to quote Des Moines. He asked me that.

Q. What?

A. I gave him this price.

Q. He asked you what price Greater Buffalo was going to—

A. Exactly right.

Q. —quote to Waterloo?

A. Yes.

Q. You told him the price?

A. I gave him this price.

Q. Fifty, 11.14—

A. That meant the price for fifty thousand was \$11.14 a thousand.

Q. Then he said: "Yes. Well, they do, Walter. I knew that in the beginning when you first told me about this on account of Des Moines controlling ABC or State Rights with any syndicate." Do you recall whether he said that to you?

A. Yes.

Q. What does that mean?

A. It means that I asked him a question, how about those features, how about getting some features, this little paper out in Waterloo can't print a comic section.

Q. What does ABC or State Rights with any syndicate mean?

A. The rights to the whole—you ought to know what it means, you are suing the syndicates for that reason right now.

Q. Mr. Koessler, I hope you will bear with us. I do know what it means.

A. You were suing them then and many years before that time.

Q. I have to ask you these questions so that the record will reflect what these cryptic phrases mean, so that the Court will have—I don't like to stand here and debate this with you.

2014 A. The Court should have an idea of what is going on, all of it.

Q. I want all of the facts, and what I leave out Mr. Raichle will be able to get from you. Now, I want to know about this "controlling ABC or State Rights with any syndicate", what did he say, what did you say to him, and see if you can refresh your recollection based on this one-sided part of the conversation?

A. My recollection is that I told him that if this paper out in Des Moines couldn't get the rights to some of these features they were not going to print a comic section at all, they weren't going to have anything to put in it except some of these so-called dogs that the syndicate can't sell to anybody else.

Q. Now, Mr. Nicht says, next sentence: "That is the only way they buy and we are handicapped. Of course, it is a big account with us but they spread their business and pick the cream of the crop from each one so that this destroys——", do you know what he was referring to?

A. Yes. He was referring to the fact that the Waterloo paper couldn't buy any features or any other paper in the State of Iowa.

Q. He said: "Of course, it is a big account——", did he mean Waterloo?

2015 A. He meant Des Moines.

Q. He said: "So this supplement for Waterloo would have to be a very special one for anyone. You know what I mean."

A. Yes, he meant it would have to have a lot of dogs in it.

Q. He then said: "No, we're out on a half-dozen of our top features and that is true of other syndicates, too, Walter. They won't buy unless they get State Rights on Sunday and ABC Rights on daily. Now NEA may have a lot of pages that are available." Did he tell you that?

A. He could have.

Q. He said: "I don't know, but it's a poor supplement for

them, but it is colored, after all. All right, I got that and that is helpful up to this point. The prices you have given me are delivered prices?" He asked you that question?

A. Yes.

Q. What did you answer to that?

A. Well, do you want all the answers I gave him?

Q. On that question?

A. Well—

Q. Yes, I would like to have everything you recall about that conversation. You recall this telephone conversation?

A. Yes.

Q. Tell us what you recall about it?

A. I recall that he asked us the price on this that we were going to put in in Des Moines. I gave him this price of eleven fourteen for fifty thousand, but we didn't put that price in in Waterloo. You know why? Because I didn't trust Mr. Nicht. I thought he was trying to get the price that we would put in and then he was going to put in a lower price for his own and take the business. I gave him this price, I actually sent an invoice for the—wrote a contract for an entirely different price.

Q. Higher or lower?

A. Lower.

Q. And did you—nonetheless, what did you say to him about the \$50?

A. I don't think I said anything to him about \$50 at that time.

Q. When did you say it to him?

A. Some time later.

Q. Tell us about that conversation?

A. Oh, I don't remember too much about it except that he wanted \$50 if he was going to release some of these features, and we said, "Okay, we'll pay the \$50." We didn't tell him for how long and I hoped not to pay it to him too long.

Q. How long did you continue?

A. Right from the beginning.

Q. Do you still pay him the \$50?

A. Yes.

Q. Today?

A. Today.

Q. You are still the victims of that shakedown?

A. Yes. We are the victims of the Anti-Trust suit, we didn't want to change it in the course of being sued.

Q. You didn't think you were doing anything wrong, is that right?

A. We were standing for a shakedown, if that is wrong.

Q. Aside from that?

A. He was the one that made—requested the bribe, the shakedown, if that's what it is.

Q. The only thing that you did wrong was to go along with it?

A. I don't know if that is wrong.

Mr. RAICHLE: If the Court please, could I refresh counsel's recollection?

Mr. BERNSTEIN: I'll withdraw the question.

Mr. RAICHLE: Well, but have in mind that counsel has in open court characterized Greater Buffalo Press as the 2018 victim and King Features as the culprit, and we had that discussion about this unusual charge of a conspiracy between a victim and a culprit in a case that holds without exception that when a man submits to extortion he has done nothing wrong.

The COURT: All right.

By Mr. BERNSTEIN:

Q. Would you please read the rest of the document to yourself, Mr. Koessler?

A. In other words, you mean there?

Q. Yes.

A. Where do you want me to start?

Q. Page 2.

A. "In other words"?

Q. That is right. Would you please read that, and I am going to ask you this question after you have had the opportunity to read the remainder of the document, would you say that this document, P-70, accurately reflects what Mr. Nicht told you in those conversations? It doesn't give your part of the conversation.

2019 A. I don't know. I didn't take a transcription of this.

I thought I was talking to a man not—to a man on the telephone. What he reported as my conversation, I don't know. I didn't think he would lower himself to do such a thing, but he did.

Mr. BERNSTEIN: I offer P-70 in evidence.

Mr. RAICHLE: Same objection. First he offered it as a transcript——

Mr. BERNSTEIN: P-70 has never been offered before.

Mr. RAICHLE: Just a minute——

The COURT: It is the same class of document, the same ruling.

Mr. STEVENS: Objection for NEA, of course.

The COURT: Yes.

By Mr. BERNSTEIN:

Q. I show you—excuse me—strike it out. In respect to the Utica-Binghamton transaction, you stated that King Features could offer a lower transportation rate with respect to Binghamton, is that correct?

A. Right.

Q. Now, is that because International's color printing plant was located closer to Binghamton?

A. Yes.

Q. And now you own—Greater Buffalo owns the 2020 stock of International, is that correct?

A. Yes.

Q. Now, what can you tell us about the strategic location of both International—all of Greater Buffalo's plants owned through its subsidiaries and owned by itself, Greater Buffalo's plant at Wilkes-Barre, through International; Greater Buffalo's plant in Dunkirk, through Greater Buffalo Press; the plant at Sylacauga, at Lufkin; are you strategically located to most all of the newspapers in the United States east of the Rockies, so far as transportation rates are concerned?

A. We are not the most—we are strategically located, not the most strategically located.

Q. Which of your competitors are better located?

A. Well, Southern Color Print is better for certain parts of the south.

Q. Which parts?

A. The parts adjacent to their plant in Newport News. It would be difficult to draw a line where they are better, where they are not.

Q. How far away from Newport News would they have this advantage?

A. I would have to check all the transportation rates to answer that question.

2021 Q. By glancing at this map, Mr. Koessler, could you tell us where you would believe Southern Color would have the advantage over one of your plants?

A. I couldn't tell you that. We would have to check the rates, you would have to name the particular cities and go through a whole list of checking rates. I can't tell you.

Q. How about the Sylacauga plant, would that have an advantage over some of Southern Color's plants?

A. Definitely.

Q. How about Lufkin, would that have the advantage over some of—

A. Exactly.

Q. Which competitor—which competitors would have an advantage over the Sylacauga—the Lufkin plant, and in what areas?

A. What?

Q. Which competitors of the plant at Lufkin would have a transportation advantage over Lufkin east of the Rockies?

A. There is World Color, that would have a transportation advantage in some areas out here in Missouri and Kansas probably, and Arkansas, Nebraska and Iowa, maybe.

Q. How about Eastern, would they have an advantage?

2022 vantage?

A. Of course they would not, they are down there in New England.

Q. Where would they have an advantage?

A. In New England and Eastern Pennsylvania, certain parts of New York, probably down as far as Maryland and then they run into competition with Southern Color Print.

Q. Can you give us a general idea of where your plant would have an advantage?

A. Well—

Q. Start out with the Wilkes-Barre plant, where would that have an advantage?

A. Well, Wilkes-Barre, the advantage isn't too great except in Pennsylvania and West Virginia, certain parts of Maryland, probably, and New Jersey, maybe certain parts of Ohio.

Q. Dunkirk and Buffalo, New York, where do those plants have an advantage?

A. Over who?

Q. Over competitors?

A. Well, we would have advantages in Ohio, Indiana, Illinois; that's about all.

Q. How about Lufkin, where would they have the advantage?

A. They would have advantages in Dallas and New Mexico, Oklahoma; that's about it. There were other advantages other than the transportation involved in these things.

Q. What others?

A. Being able to print these things cheaper and better than the competitors.

Q. Being able to print things cheaper than your competitors, is that what you said?

A. And better.

Q. Now, the Court asked you a question this morning concerning the ability of Greater Buffalo to get business and offer a cheaper and better job to newspapers that are printing their own. Going to that subject for a moment, Mr. Koessler, were you referring to a newspaper that had color printing facilities in your testimony this morning?

A. Yes, because when we were competing with a newspaper that printed their own comics, they had color facilities right at that moment when we were trying to get their business, certainly.

Q. Have you ever gotten business from newspapers that didn't have color printing facilities and you induced them to print comics?

A. Yes, we took it from competitors, King was one.

Q. Those were papers that didn't have the facilities to print their color comics?

2024 A. At one time they had the facilities to print them, most everybody did.

Q. So the history of this business, this printing color comic supplements for newspapers that didn't print their own, to your knowledge, started about what time?

A. What do you mean?

Q. When did the practice start of newspapers not printing their own color comic supplements and relying on contract printers, such as yourself, to do it?

A. Oh—am I supposed to tell the stories I have heard? I don't know anything about it, of my knowledge.

Q. Let me ask you this question—

A. My own knowledge don't go back that far.

Q. Relying on your own knowledge, Mr. Koessler, at the time you started in business did most of the newspapers print their own color comic supplements or did somebody else?

A. Most of the newspapers for whom we printed color comic supplements printed their own. King Features' business was made up of newspapers that had at one time printed their color comic sections, and they more or less operated in the same way.

Q. When they ceased printing their own color comic sections did they continue to do color printing?

A. Yes.

2025 Q. Could the color printing facilities be adapted to color comic supplements?

A. Yes, today and for many years since.

Q. And does it require any special skill to print color comic supplements?

A. They are printing four colors in the newspapers practically every day, so they got the same crews, the skilled crews, if it is skilled, they could use the same crews to print the comics as they desired.

Q. In your opinion, most of the newspapers in the United States have a sufficient skill to print color comic supplements if they desired?

A. Yes.

Q. But I gather that they are not skillful enough to do as good a job as Greater Buffalo Press?

A. We wouldn't be selling them if they could do it to equal advantage.

Q. One feature is the quality that Greater Buffalo Press has over newspapers, is that correct?

A. That is correct, yes.

Q. How about equipment; does Greater Buffalo have an advantage in having the skill of taking what other people regard as undesirable and unsatisfactory or antiquated equipment and converting that into efficient, effective color printing equipment?

2026 A. We think we do.

Q. So it is by reason of those factors that you are able to make a profit and yet induce newspapers to have you do the printing, rather than do their own?

A. Newspapers save money, it isn't too great, it is something. They save the headaches that go with it too.

Mr. BERNSTEIN: Does your Honor want to keep on going?

The COURT: Yes. I might say that I have a mission tonight, Bishop Sheen is in town to speak, I am going to introduce him. I have to leave at three fifteen to get prepared, go home and square away. I want to do that tonight. I will be glad to begin at nine thirty in the morning to make up for it, if you are contented to begin at that time.

Mr. BERNSTEIN: The reason I ask that question, Mr. Koessler appeared to be getting tired.

The WITNESS: I am fine, don't worry about it.

The COURT: Gentlemen, I know Mr. Koessler has had some physical trouble in the past. He looks hale and hearty
2027 now. Let's run until three and that will give me time and give him a rest. Can you start at nine thirty in the morning?

Mr. BERNSTEIN: Yes.

The COURT: Can you gentlemen?

Mr. RAICHLE: Yes.

Mr. STEVENS: Yes.

The COURT: We will start at nine thirty.

By Mr. BERNSTEIN:

Q. Now, going to another topic, I show you P-16 in evidence, a letter that you wrote to Mr. Nicht——

Mr. RAICHLE: What is the date?

Mr. BERNSTEIN: June 13, 1955, it is in evidence.

By Mr. BERNSTEIN:

Q. I invite your attention to the first paragraph. You say to him: "Dear Frank—" before we go into that, might I ask this question, you say, "Dear Frank," were you friendly with him?

A. Sure.

Q. And tell us a little bit about him; was he a meticulous person that kept detailed notes?

A. Sure did.

2028 Q. Well, tell us some of your experiences with that?

A. Well, all I know is what he said. He used to wake up in the middle of the night and write himself a lot of notes and bring them down to the office——

Mr. RAICHLE: You don't know whether he was meticulous.

Mr. BERNSTEIN: I object.

Mr. RAICHLE: Object all you want.

Mr. BERNSTEIN: I will object all I want. I object, Your Honor, there was no basis for interrupting the witness' testimony.

Mr. RAICHLE: Just a minute, Just a minute—

Mr. BERNSTEIN: We are on cross examination and I think that any interruption to indicate any kind of a response to the witness is highly inappropriate.

Mr. RAICHLE: You tried to put the word "meticulous" in his mouth. He is explaining why it wasn't meticulous. He had these nocturnal habits of talking to himself at night. How does he know on those occasions whether he was meticulous or not.

Mr. BERNSTEIN: I object, I object—

The WITNESS: I didn't recognize the word "meticulous".

The COURT: I was going to comment that all I heard Mr. Koessler say was that this man used to wake up nights and dictate notes to himself. I don't know that that word "meticulous", is injected in here. Do you know anything about that?

Mr. BERNSTEIN: I will withdraw the word.

The COURT: Do you know anything about the notes he made?

The WITNESS: No, nothing more than he told me. He could not sleep nights, he would get up and write these notes and go back to bed again.

By Mr. BERNSTEIN:

Q. Right, and did he impress you as being unreliable, eccentric?

Mr. RAICHLE: I object to this, if Your Honor please.

The COURT: I suspect he did; overruled.

Mr. RAICHLE: Then the door is open for me to ask what his impressions were in other respects, whether he was a
2030 man of moral—

The COURT: You asked him, in his relationship to him, if he thought he was somewhat unreliable and eccentric.

The WITNESS: No, Nicht had a good mind, he was a very, very difficult person. He always reminded me of a statement Huey Long made at one time, he never took any interest in seeing the other person's side, and Huey Long said, "Holler murder, never give in an inch." That sort of described the character he was.

The COURT: I want to hear that again, what did Huey Long say?

The WITNESS: "Holler murder, never give in an inch." He was a tough fighter, a real tough fighter.

By Mr. BERNSTEIN:

Q. He was a difficult business opponent of yours?

A. Very difficult.

Q. He was a strong competitor of yours?

A. Yes, very strong.

Q. And you did not regard him as being off his rocker or a mental case or anything like that?

A. Not at all.

Q. Did you have any impression that the notes that he made were musings or something that were unreliable, or when he wrote notes to himself he was reporting his thoughts, reminders—

A. And his wishes.

Q. And his wishes. His side of the matter?

A. His side and things he hoped would come to pass.

Q. Nonetheless, in your opinion they were reflections of the operation of his mind at the moment?

A. What he hoped for, and the way he thought certain things would happen, and in a lot of instances the way he thought they did happen.

Q. Going to P-16, you have it in front of you, you say in the first paragraph: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate, and the Greater Buffalo Press, Inc." Did you mean when you told that to Mr. Nicht that you were in agreement with him on these provisions?

A. I meant to put in writing what he told me that I had to put in writing in a letter. These things that are in this letter are all recorded in one of Mr. Nicht's memorandums some 2037 days or weeks before this time. This is what we had to do to get along with Nicht.

Q. You felt at the time you wrote this letter and signed this letter that in order to get along with Nicht you had to record that you were in agreement with this, it would be put into a formal contract?

A. I had to say that in a letter.

Q. All right. Now—

A. I didn't have to say it but I did say it.

Q. You felt it was good business to say it?

A. It was good business not to get on the wrong side of Nicht.

Q. Why was that?

A. He was a difficult guy and he could do a lot of harm to you.

Q. Note the date on that letter, that is June 13, 1955?

A. Right.

Q. Had you purchased International yet? Note the first paragraph there—note the next paragraph. The next paragraph says: "The Greater Buffalo Press, Inc., will purchase International Color Printing Company, and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company." What is your recollection now? Was this before

2033 you actually bought International?

A. I think it was.

Q. Was this—were you having—

A. It was before we actually signed the papers.

Q. That is correct, that is what I meant. You had—well, let me ask you the question, had you concluded the deal even though the papers weren't signed yet?

A. With International?

Q. Yes.

A. At this time?

Q. Yes.

A. I don't think so.

Q. And what could Nicht have done to you? You say you were afraid of Nicht, it was a good business to put it in a letter. What could he have done?

A. He could have done a lot of things; annoyed our customer by raising the price of the features, he could have made International Color Printing Company wait for their money if and when we bought the thing, he could have held up their bills and things like that.

Q. Did you intend that King Features would continue to be a customer of International's after—

A. We didn't know.

Q. Did you intend that?

2034 A. Did we hope for it?

Q. Yes.

A. We thought that, knowing Nicht, the kind of guy he was that he would give his business to the guy that would give him

the best price. We thought we would give him the best price, we thought we would get the business on that basis.

Q. At that time Mr. Gorman was negotiating a contract for a ten-year period with Mr. Nicht, is that correct?

A. Right.

Q. That contract would tie up King's business for International?

A. If it was signed.

Q. If it was signed.

A. If it was negotiated and signed.

Q. Were you anxious for him to sign that contract with International?

A. Naturally.

Q. Why?

A. Because he had some business, we wanted the business.

Q. Whose business did you want?

A. We wanted King's business.

Q. Through International?

A. Any way.

Q. Did you also want King's business in Greater
2035 Buffalo Press?

A. Sure we did.

Q. Nicht insisted that you put into a letter a commitment or an understanding—strike that. Nicht insisted that you put into a letter your agreement that Greater Buffalo will purchase International Color Printing Company, is that correct? That is in paragraph one?

A. About that way, yes.

Q. And he then says—you then said: "And assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company." What did that contemplate?

A. It didn't mean anything, Greater Buffalo Press didn't assume it—

Q. I know they didn't. At the time was there conversation about Greater Buffalo assuming obligations of the contract that King was then negotiating with International?

A. Did Mr. Nicht of King Features know that we were negotiating with International to buy the printing plant; yes, he knew about it.

Q. How do you know that?

A. Gorman, I assume, told him and maybe I told him. He knew about it, anyway.

2036 Q. Had he known about it for some time?

A. I think so, yes.

Q. You said before that he introduced you to Mr. Gorman, is that correct?

A. He actually didn't introduce me, he called on the phone, as I remember, and told me—told Joe Gorman I was coming over to see him.

Q. And did you have any discussions with Nicht then about your buying International?

A. I don't think I did. I mean, the least you told Mr. Nicht, the better you were off.

Q. Well, in any event, that conversation with Mr. Gorman was in early '54—early '55?

A. Early '54, yes.

Q. Or late '54. You had been negotiating with Mr. Gorman over a period of time, is that correct?

A. That was the first meeting in 1954 that I talked to Gorman about it.

Q. 1954?

A. I think it was late in 1954.

Q. And the sale was some time in June, the sale was on June 25, 1955?

A. Right.

Q. Over the period of time between late 1954 and June 25th, 1955, had you had frequent conversations with Mr. Gorman about the deal?

2037 A. I don't know how frequently they were. We had conversations, yes.

Q. And you remember meeting him here at the Hotel Statler in Buffalo concerning the transaction?

A. I could have.

Q. Do you recall whether or not while that was going on did you authorize him to negotiate a contract with King concerning International? Did you discuss it with Mr. Gorman?

A. Well, say that again.

Q. Did you discuss with Mr. Gorman his renewing a contract with King for a long period of time?

A. Sure.

Q. That was while you were discussing with him the purchase of International, is that correct?

A. Sure.

Q. Did you discuss the price that Gorman would charge King during the purchase of International?

A. You mean the prices that Gorman would charge King?

Q. That is correct.

A. No.

Q. You didn't discuss that at all?

A. No. Didn't know a thing about it, as a matter of fact. Gorman told me very frankly that the prices we are going to get from King are exactly the prices we were getting in the past, so there was no question what we were going to get.

Q. You did know, you did contemplate, you did make your business transaction believing that if the contract was successful between International and King, International would get the same price it had been getting in the past, is that correct?

A. What is this?

(Thereupon the last question was read by Reporter.)

Mr. RAICHLE: What business transaction?

Mr. BERNSTEIN: I'll withdraw the question.

By Mr. BERNSTEIN:

Q. While you were negotiating with Mr. Gorman shortly before June 25, 1955, was it your state of mind that if King signed a contract with International, International would get the same prices that it had gotten in the contract—

A. We didn't talk about that. It was my state of mind that if Gorman—that we could take the business that Gorman had been doing in the past and not making any money on, and if we put our methods and machinery in there we would make—we could make money at the same business, on the same business, on the same rates.

Q. You were not concerned whether he got the same or higher, you were concerned that he would get less, weren't you?

A. No, we were not concerned. We didn't expect we were going to get anything less.

Q. You anticipated the lowest he would get would be the same and if he could get more, so much to the good?

A. That was a reasonable anticipation, that we would get no worse than the same.

Q. Getting back to the conversation you had with Mr. Nicht in paragraph one, Mr. Nicht asked you to put in your letter that: "The Greater Buffalo Press, Inc., will purchase Inter-

national Color Printing Company, and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company." Did he mention anything to you as to why he wanted you to say you will purchase International Color Printing Company?

A. I don't think so.

2040 Q. Why did you include that in paragraph one? You say: "These are the provisions on which we are in agreement."

A. Why did I say what?

Q. Why did you say to Mr. Nicht, "We are in agreement that Greater Buffalo Press, Inc., will purchase International Color Printing Company"?

A. Because Mr. Nicht put that in the memorandum, that we were supposed to put in a letter.

Q. Now, we go to paragraph two: "The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press and King Features Syndicate presently have." What did that mean?

A. It meant to me that we were going to hang on to our business.

Q. What about King?

A. I assume he was going to try to hang on to his.

Q. He insisted that you put that into a letter?

A. I don't know whether he did. I think it's in that memorandum. It was sure understood that way, we were going to hang on to ours, he was not going to give anything away.

Q. That was the understanding you and Nicht had as a result of numerous conversations?

2041 A. That was the reasonable understanding we had; we were not going to give him anything, he was not going to give us anything.

Q. Was that understanding arrived at in the course of numerous conversations—

Mr. RAICHLE: No, it was arrived at in the course of pending negotiations.

Mr. BERNSTEIN: I object. I object, your Honor, to counsel's interruptions with the cross examination.

Mr. RAICHLE: I will interrupt as often as you ask an improper question.

Mr. BERNSTEIN: I respectfully submit that the question was not improper.

Mr. RAICHLE: It has been made clear that this letter was written in the course of negotiations which ended with the correspondence that I put in evidence where they said they could not enter into the contract and the negotiations were at an end. You are trying to make this letter a contract and agreement, it was talk about a prospective contract that the parties could enter into.

2042 The COURT: I will resolve that at nine thirty.
(Thereupon the court was in recess at 3:00 p.m.)

* * * * *

2043 PROCEEDINGS OF JUNE 28, 1967, COMMENCING AT
9:30 A.M.

JOHN WALTER KOESSLER, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, I show you Exhibit P-16, a letter dated June 13, 1955, from you to Mr. Nicht, in which in the first paragraph you said: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate and the Greater Buffalo Press, Inc."

A. Yes.

Q. And we were discussing this yesterday and I believe it was stated that this was shortly before Greater Buffalo Press, Inc. took title to the stock of International Color Printing, is that correct?

A. Right.

Q. Now, inviting your attention to paragraph three, you said to Mr. Nicht: "The Greater Buffalo Press, Inc., and International Color Printing Company, will grant King Features Syndicate exclusive sales rights on all new business with
2044 these exceptions"—then you list four newspapers as exceptions. Do I understand this to be that as of this time, June 13, 1955, the understanding that you had with Mr. Nicht was that neither International, which you intended to buy, nor Greater Buffalo Press, Inc., which you then controlled

would do any printing on any new business for anyone else except those four newspapers, is that correct or is that wrong?

A. No, it didn't say that. It said that we would grant King—this is a letter—Nicht's proposal we contained in the letter—it says, as I understand it, we would grant him exclusive sales rights to sell printing; not that we would print exclusively for them.

Q. Right. Did that mean that on all new business, with those four exceptions, Greater Buffalo Press, Inc., would not take the contracts but King would take the contracts?

A. Yes. But these four jobs that are here were substantially the only jobs we secured of any importance.

Q. Tell us about those four jobs, the Philadelphia Bulletin, as of that time, who was printing for them?

A. They printed their own.

Q. And at that time was Greater Buffalo Press, Inc. 2045 soliciting their business?

A. Yes.

Q. At that time was King soliciting their business?

A. Yes.

Q. So the understanding was—as of June 13, 1955, the understanding was that the Philadelphia Bulletin would be Greater Buffalo Press' account if it secured it, is that correct?

A. No.

Q. What did it mean?

A. It meant we were going to continue to solicit the business for the Philadelphia Bulletin on our own account.

Q. How about King?

A. They could do that too.

Q. Either one could solicit?

A. Yes.

Q. With respect to other new business, Greater Buffalo Press would not solicit in competition to King?

A. There wasn't any.

Q. There wasn't any other business?

A. There wasn't any business we were interested in getting.

Q. Well, there wasn't any business you were interested in getting; there was other potential business?

2046 A. Not that we thought was possible to get, no. These were the accounts which the future contained or which were contained in the future. This was the future to the business.

Q. The Des Moines Register Tribune, who was printing that at that time?

A. They printed their own.

Q. Was Greater Buffalo Press, Inc., soliciting?

A. Yes, and we still are.

Q. Was King then soliciting?

A. Yes.

Q. Who has that contract today?

A. They are still printing their own.

Q. The Oklahoma City Oklahoman, who is printing that?

A. They were printing their own.

Q. Was Greater Buffalo soliciting their business?

A. Yes.

Q. Was King?

A. Yes.

Q. Who got the contract?

A. They still print their own.

Q. The Pappert Group of Newspapers, who was printing it at that time?

A. Acme Color Printing Company.

Q. Was Greater Buffalo soliciting that business?

2047 A. Yes.

Q. Was King soliciting that business?

A. Yes.

Q. Who ultimately got the contract with the Pappert Newspapers?

A. We, Greater Buffalo Press.

The COURT: Where is that located, Mr. Koessler, that paper you spoke of, Pappert?

The WITNESS: Pappert was actually a sales agent or syndicate and he served a large number of small papers.

By Mr. BERNSTEIN:

Q. In what part of the country?

A. In the southwest, Texas, Oklahoma, New Mexico, in that Texas area.

The COURT: Lufkin picked that up in due course?

The WITNESS: That is right.

By Mr. BERNSTEIN:

Q. Now, I invite your attention to paragraph four. You said to Mr. Nicht on June 13, 1955, that you are in understanding with him and that it could be included in a formal contract that

2048 "The cost to be charged King Features Syndicate for printing four color, standard size, comic newspaper supplements in individual runs of 200,000 or less, is the price provided in the contract between International Color Printing Company and King Features Syndicate." Now, did that mean—did paragraph four mean to you that for runs of 200,000 or less that were going to be printed by Greater Buffalo Press, Inc., you were going to charge King the same price that was then included in the contract they then had with International Color?

A. No, what this meant was that the prices that International Color Printing Company was then charging King—it went back for several years—would be the same prices.

Q. That who would charge?

A. That International would charge.

Q. That International would charge or Greater Buffalo?

A. International.

Q. This was at a time that you had not owned International as yet, is that correct?

A. We were negotiating to buy it.

Q. Right. So your discussions with Nicht was that if you bought International, then the price that International would charge King would be the same price that had been in 2049 existence up to that time?

A. We were not doing that. We said that would satisfy Greater Buffalo, but whether it would satisfy Mr. Gorman was something else.

Q. Well, if after Greater Buffalo owned International, if it satisfied Greater Buffalo, that was all that was necessary?

A. No, it wasn't. Mr. Gorman ran that plant and continued to run it, we never interfered with him.

Q. How long did that continue?

A. Always.

Q. Until today?

A. Until today.

Q. So in your method of operations, Mr. Gorman is in charge of the pricing at the International plant?

A. Yes.

Q. Does he have any other duties; is he in charge of the pricing at Sylacauga?

A. No.

Q. Does he have any duties in connection with Sylacauga at all?

A. No.

Q. When did that stop?

A. It never started.

Q. Can you recall what the discussions were with Nicht concerning the contract that King was negotiating with
2050 Gorman for International that required him to ask you to put this paragraph four in P-16?

A. I can't remember, any more than he knew that we were negotiating to buy International Color Printing Company, I suppose he wanted to have some assurance that we would not stick him up, or International wouldn't, that the situation would be more or less as it was. I imagine that is what went through his mind. I don't know.

The COURT: Excuse me. Mr. Koessler, I appreciate that you are very familiar with all this. I am trying to get a grip on it. I want to ask you what probably are a couple of simple questions.

Now, yesterday somewhere during your talk you were speaking of Nicht, and that he was a tough competitor of yours, I understand, and you used such phrases as he could cause you trouble, and various things. Now here, as I get the story, International run by that family down there, was not doing well, but

King had a contract with them to print color comics for
2051 for them, which had a few months to run?

The WITNESS: That is right.

The COURT: Now, you were going to buy that, you were interested in buying that to refurbish the plant, and you hoped by better mousetrap practices to make some money, you could do it cheaper and faster, and so forth?

The WITNESS: Exactly.

The COURT: I am a little fuzzy on how you and Nicht got together over this. You knew, of course, of the contract that King or Nicht had with International to print their stuff for a few more months, and then you were going to buy it, is that correct, you were negotiating to buy it?

The WITNESS: King knew we were, yes.

The COURT: I don't see how you came together, or why, to discuss the future. Could you tell me that?

The WITNESS: Yes. I had known Nicht. Greater Buffalo printed material for Nicht. The material that—for Nicht and
2052 King Features—the material we printed for him was taken out of International Color Printing Company. They were supposed to be his exclusive printers but if

he could get a better price, he would go to them. He went to us and I came to know him in that way, and I came to know something about the business of International Color in that way. We knew something, we knew the jobs they had and the production difficulties that were involved in those jobs, and we thought we could solve those production difficulties and make money in that plant as it was presently operating.

The COURT: With a view of hoping that the future would be as smooth as possible, you began to discuss International's future work for King, as these letters bear out, is that correct?

The WITNESS: Yes.

The COURT: All right.

By Mr. BERNSTEIN:

2053 Q. You were discussing that with Nicht over a period of several months, is that correct?

A. But not too frequently, no.

Mr. RAICHLE: I'm sorry, I didn't hear that answer (Thereupon the last answer was read by Reporter.)

By Mr. BERNSTEIN:

Q. Now, inviting your attention to paragraph five. You said to Mr. Nicht: "The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Buffalo and Dunkirk plants, for individual runs of four color, standard size, comic newspaper supplements is \$5.21 per thousand." Now, was that more or less than what International had been charging Mr. Nicht?

A. I don't know. It is an entirely different basis, an entirely different plan.

Q. In any event, the purpose of paragraph five was that you contemplated that King—in addition, that King was going to have a contract with International that then provided that King—that International would be its exclusive printer? Does this conform to your recollection, I think the contract provided that 25% of the business King could have printed

2054 elsewhere, is that correct?

A. Yes.

Q. So—

A. But they never did, except in these instances I told the Judge about.

Q. Right. Paragraph five contemplated that when a new agreement would be put into effect on virtually the same terms as the old agreement, that Greater Buffalo Press would also d

printing for King, not only at the International plant but at its Dunkirk and Buffalo plants, is that correct?

A. Yes. Mr. Nicht—this had to do with runs over 200,000.

Q. The first thing is, does that first part that I have just read pertain to runs over 200,000?

A. Right.

Q. Or runs under 200,000?

A. Over 200,000.

Q. Excuse me, Mr. Koessler, I think you are mistaken. Would you please read the next sentence to yourself and see if that changes your mind?

A. Yes, that is right, 200,000 or less.

Q. So that for the sake of the record—

A. Yes, go ahead.

2055 Q. —would you state what your understanding of paragraph five was?

A. Well, it is a scale of prices based on printing a run of 200,000 or less.

Q. To be printed by Greater Buffalo Press, Inc., in its Buffalo and Dunkirk plants?

A. Yes.

Q. And then the next sentence: "The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.67 per thousand." So that you had a lower price for runs beyond the 200,000 figure, is that correct?

A. That is right.

Q. Let me digress a moment. Would you please explain to the Court why the price is lower for runs over 200,000, why it is less costly for Greater Buffalo Press, Inc., to do runs over 200,000?

A. Well, the larger the run, the lower the cost per M. The reason for that, to make—to produce any run, whether it be 5,000 or a million, you have to prepare these printing plates, you have to register them, you have to do what they call make ready. It is what they refer to in the machine tool business as tooling up, you've got to get the tools. Once you have the tools, then you go on and print, you can print endlessly.

2056 The COURT: It is the same thing in any other business?

The WITNESS: Exactly.

By Mr. BERNSTEIN:

Q. Had Greater Buffalo Press, Inc., been printing more large runs than smaller runs up to 1955?

A. That is what we were interested in, the large runs.

Q. How about International, what were they printing, mostly the small runs?

A. They had to take what Nicht gave them.

Q. What was that?

A. It was a lot of small runs; very, very difficult to print economically.

Q. That had been that way up to June 13, 1955?

A. Yes.

Q. Now, I invite your attention to paragraph six, page two, and there you say: "The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Lufkin, Texas plant for individual runs of 200,000 for color, standard size, comic newspaper supplements is \$5.15 per thousand." So, Mr. Koessler, was the purpose of that provision, the result of your discussions with King, that you had planned to
2057 open a Lufkin, Texas plant, and that when it was opened you would do printing there and this would be the price of the printing, \$5.15 per thousand?

A. Yes. Nicht knew at this time we were going to open a plant in Lufkin. We were interested in getting his business if we could, and these are the prices we gave him, the basis on which we would take the business. The difference in the price between five twenty-one and five fifteen I think is the difference in the cost of newsprint down there.

Q. All right. Then the next sentence of paragraph six I won't take the trouble to read it in the record, read it to yourself, and the next sentence provides a price for printing at Lufkin, Texas for King Features by Greater Buffalo Press, Inc., for runs over 200,000 at \$4.61 a thousand, is that correct?

A. Yes.

Q. Sir?

A. Yes. No, that is the cost of additional thousands beyond 200,000.

Q. Right.

A. Not the cost of runs over 200,000, but the—in other words—

Q. If you had a 300,000 run, for the first 200,000 you would pay \$5.15 a thousand, for the additional thousand you
2058 would pay \$4.61 a thousand?

A. That is right.



In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 821

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET.AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

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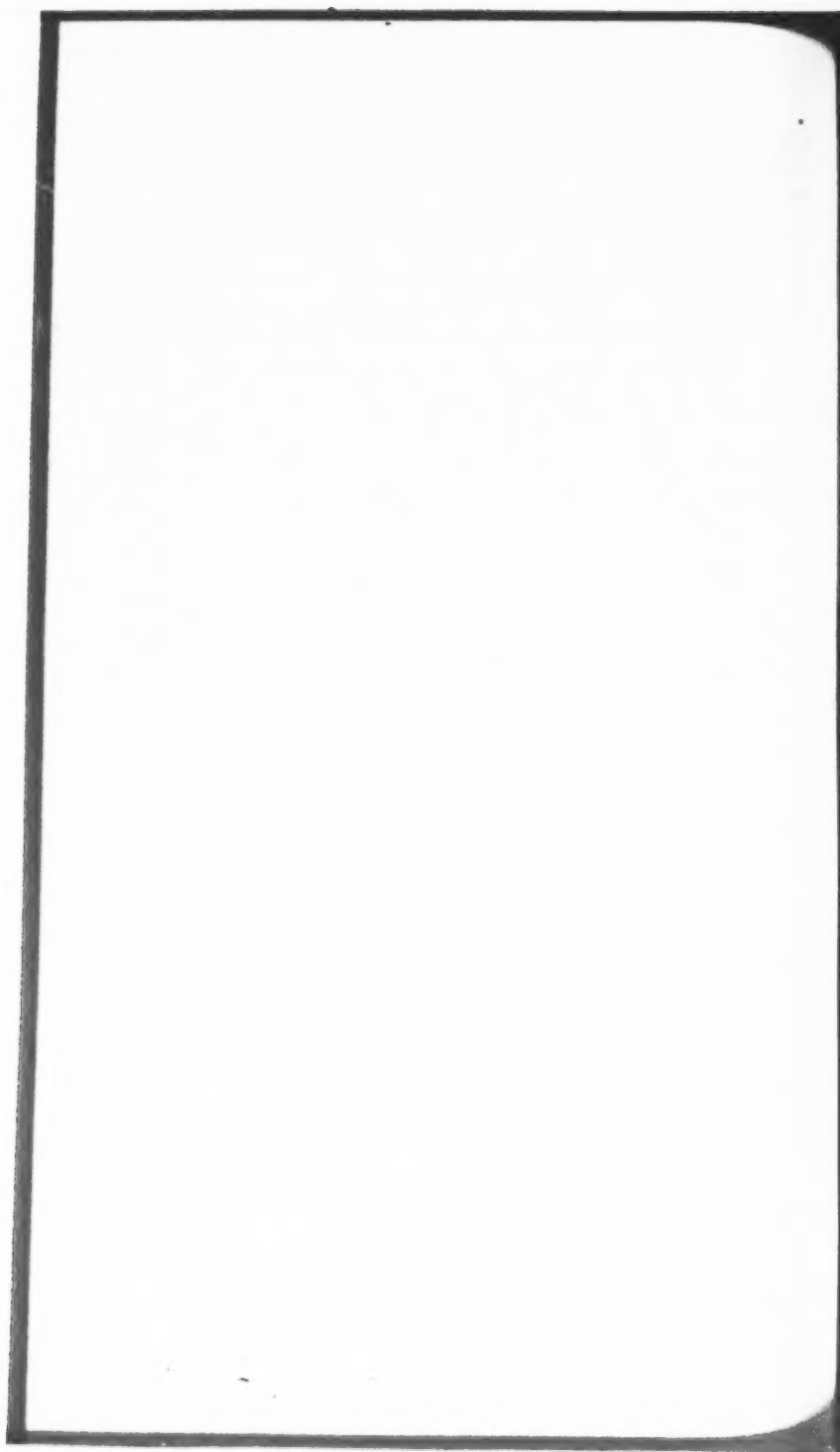
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Q. Then the rest of paragraph six, what does that do?

A. That merely describes the size of the page, and what an individual run means. It means the custom-made job as distinguished from a ready-print.

Q. Now, I note that you have a schedule of prices there: "175,000—\$5.23. Additional thousands—\$4.61. 150,000—\$5.34. Additional thousands—\$4.61." Then you have five more items similar to that with different prices and different schedules there. Now, had you been discussing those precise amounts with Nicht?

A. No. These were the prices that I—he wanted to know what it would cost, and I worked up these prices and he asked me to put them in a letter, and I gave him the letter.

Q. This was the first time you communicated those prices to Mr. Nicht in this precise detail?

A. I think so.

Q. And then paragraph seven makes provision for increase or decrease of prices based on labor; is that a fair summary of it?

A. Right, yes.

Q. Paragraph eight provides for an increase or decrease in the price, depending upon whether newsprint goes up or down or ink goes up or down beyond the price you have specified there?

A. That is right.

Q. And then I invite your attention to paragraph nine on page four. You said: "For the period of this contract, The Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate." Did that mean to you that Greater Buffalo would not do any contract printing for any other syndicate of newspaper supplements?

A. That we were not already doing. We were doing it for them all, so we were not conceding anything there.

Q. So what you undertook with him in this letter, if you were printing for an account, you were to continue printing for an account?

A. That is right.

Q. And for those new accounts that you specified in paragraph three, the four newspapers, if you got that you would print that?

A. Yes.

Q. And whatever you would print for King Features, 2060 you could print that, but no others, is that correct?

The COURT: I think he said there were no others.

Mr. BERNSTEIN: We will explore that.

The COURT: You mean new business starting up?

Mr. BERNSTEIN: Let us explore that.

The COURT: What you are striking at, you claim there was some illegality——

Mr. BERNSTEIN: My point, your Honor, is that this whole transaction was all one ball of wax. As part of the ball of wax, King wanted to be the exclusive sales agent. In other words, King didn't want Greater Buffalo Press to do business with anyone else but King. That is what King wanted.

By Mr. BERNSTEIN:

Q. Was that your understanding?

A. That is what they wanted.

Q. You were not about to give it to them?

A. No.

Q. You did state in paragraph nine of this letter, in response to his request to be your exclusive agent, you said to him that 2061 Greater Buffalo will contract to print only for King and only for its own accounts that it then had, or only for its accounts, for nobody else, is that correct?

A. What we were saying we would grant him was exclusive sales rights to something there wasn't anything to sell.

Q. Let's analyze that. At this time, this was before the contract that you made with Buffalo Color Press and with NEA to buy Buffalo Color Press' equipment or business and do the printing for NEA of the accounts then printed in Buffalo Color Press, is that correct?

A. Before that time?

Q. Yes.

A. Yes.

Q. It was?

A. Yes.

Q. So that if you signed a formal contract for paragraph nine, then you would be prohibited from printing the runs that were then in Buffalo Color Press, is that correct?

A. That is one of the thoughts we had after I wrote this letter.

Q. At the time you wrote the letter you were giving him in

writing, by this letter, a commitment that it was your understanding that you would not print the NEA business it
 2062 was then doing at Buffalo Color Press at either Dunkirk or Buffalo or Sylacauga or Lufkin?

Mr. RAICHLE: I object to that.

The COURT: "Commitment", this was simply an offer that never got off the ground.

Mr. BERNSTEIN: I will withdraw the word "commitment." I mean——

The COURT: Let me ask you this. This NEA color print matter that was just discussed with you, as I understand your answer, is something that became the subject of serious reconsideration after this offer to treat——

The WITNESS: Yes.

The COURT: ——or the beginning of negotiations had occurred?

The WITNESS: That is right.

The COURT: It became important to you in your considerations?

The WITNESS: That is right.

The COURT: This never culminated in any agreement, you claim?

The WITNESS: It did not.

The COURT: All right.

2063 By Mr. BERNSTEIN:

Q. But we understand that as of June 15, 1955, even though it didn't culminate in a formal, written contract, this is then what you told Nicht that you were in agreement with him that could be included in the contract, is that correct? That is your opening statement?

A. Well, we agreed up to the certain limitations. You got to submit it to your lawyer, submit it to the other people in your company.

Q. Is it a fair statement to say, all other things being equal, "if you, Mr. Nicht, and I, Mr. Koessler, have our druthers, this is the way it will be if there are no impediments to it"?

A. No, there were lots of other impediments; whether your attorney would okay it, whether your other people in the company would okay it. Leave me answer that other question you brought up; would it stop us for printing for NEA. No, it wouldn't, we were already printing for NEA and the Buffalo Color Press.

Q. Under written contract?

A. No, but were were printing for them. It wasn't excluded by this letter.

Q. In your opinion then this letter didn't exclude any
2064 new business from anybody that you were then printing for?

A. That is right.

Q. But King wanted—Nicht wanted it otherwise, is that correct, in his discussions with you?

A. Yes.

Q. He wanted you to print only for him, is that correct?

A. Well, that is hard to say. No, we print for ourselves, we print for everybody we otherwise printed for, which was everybody, so that I don't know what Nicht was talking about. That somewhere along the line some job would come up I hadn't thought about, maybe, you know how these things happen, that he would have the exclusive right to sell.

Q. The next part of paragraph nine says: "King Features Syndicate on its part will process all its contracts for printing four color, newspaper comic supplements through the Greater Buffalo Press, Inc., and International Color Printing Company. The exception to this provision is the contract which King Features Syndicate holds with the Dallas Times Herald. At the expiration of this contract, and at such time as King Features Syndicate can do so without business embarrassment, King

Features Syndicate will process this printing at the
2065 Lufkin, Texas plant of the Greater Buffalo Press, Inc."

Now, did you have in mind when you said that in paragraph nine that King would do its printing business only with Greater Buffalo Press and International or any of Greater Buffalo Press' subsidiaries, except for this Dallas Times Herald which it would, when that contract expired, transfer to Lufkin?

A. No, I didn't. I put that in because Nicht was looking for something exclusive, we were going to look for something exclusive, I knew he would never agree to this.

Q. But that was what the language intended to convey; if he accepted it, you intended that he would be exclusive with Greater Buffalo Press?

A. No. If he accepted it, we would have had to get it okayed by other people, other than myself.

Q. Okay. Now, in number ten—

A. This was to make Nicht happy, if you could, at least for the moment.

Q. Did he give you the language for that part of number nine, or was that yours, who drafted that language?

A. I did.

Q. How about paragraph ten, did you draft the language of paragraph ten?

A. Yes. I did it all. Bad or whatever, I'll take the 2066 responsibility for doing everything, nobody helped me.

I got no legal advice on this.

Q. I take responsibility for a lot of things that have my signature on that I don't prepare. Some of my assistants prepare it, I adopt it by signing it. Was this——

A. I'm the author and the writer and the signer, unfortunately.

Q. Now, in paragraph ten you say: "The provisions contained in paragraph nine may be altered by mutual consent of The Greater Buffalo Press, Inc., and King Features Syndicate, where the interests of both parties are mutually served."

A. Where is this?

Q. Paragraph ten, the first sentence.

A. Paragraph ten, the first sentence.

Q. Then the second sentence you say: "Any and all provisions of this contract may be changed by mutual consent in the mutual interests of both parties." What did you have in mind when you drafted paragraph ten?

A. Well, if two people agreed on changing it, it could be changed.

Q. Until two people agreed on changing it, it would be in accordance with paragraph nine and the language of 2067 paragraph nine, so that King would print exclusively through Greater Buffalo and its subsidiaries, is that correct?

Mr. RAICHLE: I have an objection to it, it seems to me——

Mr. BERNSTEIN: I will withdraw the question.

By Mr. BERNSTEIN:

Q. Now, paragraph eleven says: "The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of The Greater Buffalo Press, Inc., in the event The Greater Buffalo Press, Inc., offers its business for sale. This contract is to be for a period of ten years." Now, had

there been any discussion with Nicht about the substance of paragraph eleven?

A. No. He wanted that in there, that is all.

Q. But that was his suggestion to go in?

A. All these are his suggestions.

Q. Well, paragraph ten was his suggestion too?

A. Yes, certainly it was.

Q. And paragraph nine was his suggestion?

A. No, I don't think that was his suggestion. That was a thought of mine.

Q. Pardon?

2068 A. That somewhere along the line we might change this thing.

Q. Paragraph eight was information that you supplied to him for the first time in this letter, correct?

A. Right.

Q. And paragraph seven and six——

A. At his request.

Q. Those prices, that was the first time that you listed those in those details in this letter?

A. That is right.

Q. How about paragraph five and four, had you discussed that with him before?

A. No. I mean——

Q. That was the first time in this letter, is that correct?

A. Yes.

Q. Now, what did you have in mind—strike it. Going back to paragraph eleven now, Mr. Koessler, you said that that was Mr. Nicht's suggestion?

A. Yes.

Q. Did he give you that suggestion orally or in the form of a written memorandum?

A. I think you'll find all of his memorandums in your exhibits in that black book. You will find every suggestion in this letter with the exception of prices in that book.

2069 Q. And the memoranda that are in the black book you are talking about, I assume you are referring to this——

Mr. MOORE: The affidavit of E. H. Feldman submitted in support of the order to show cause, set number two.

Mr. BERNSTEIN: Can we have that marked for identification? (Thereupon document referred to was marked Plaintiff's Exhibit P-71 for identification.)

By Mr. BERNSTEIN:

Q. Now, are you referring to memoranda that Mr. Nicht wrote to himself or to Mr. Green or to you, or what?

A. Should I pick it out for you?

Q. Would you please?

A. Here it is.

Q. Will you please read it, identify the document that you are talking about?

A. This is a memorandum written by Nicht, I assume, his signature is on it. Yes. No, there is no signature of Mr. Nicht.

Mr. RAICHLE: What is the date?

2070 The WITNESS: May 10, 1955.

By Mr. BERNSTEIN:

Q. In Exhibit P-71 it is identified with a tab as 5A-K., and the memorandum reads as follows: "The following points should be incorporated in the proposed selling contract with Greater Buffalo Press." That is abbreviated, G. B. P. "One: it must be contingent on our proposed new ICP contract." That refers to the International Color Printing contract?

A. That is what Nicht said.

Q. That is what Nicht said, right.

A. That isn't in here.

Q. "2) We must be exclusive sales agents." That is what Nicht said?

A. That is what Nicht said.

Mr. RAICHLE: If the Court please, this is an attempt to get through the back door what he could not get through the front.

The COURT: I understand that is one of these memorandums that we had squarely before me. I must be candid, I have very serious reservations on them, that these are proper here. How-

ever, I cannot resolve it. If, in order to progress with
2071 the case and the cross examination, you want to allude to them, I see no great harm. I am going to invite you

gentlemen to renew your discussions had with me before on these notes of Nicht's, as to their propriety in evidence. But if you want to examine Mr. Koessler, with a view of having him refresh his recollection of what Nicht talked about with him, or even perhaps wrote to him, for that limited purpose, I am going to hear this. I am aware of the other problem on the question of the propriety of this type thing in evidence in the case. If there was a jury here I am afraid I would have to meet it head

on. I think I can handle it otherwise. Do you understand, Mr. Raichle?

Mr. RAICHLE: I think I do, your Honor. I make this observation; that if this is a memorandum of Nicht's, as counsel claims it to be, if it has any probity at all, it is proof positive of the fact that these conversations and exchange of letters and communications between Nicht and Mr. Koessler were in the nature of negotiations. There was no contract, there was no meeting of the minds, there was no agreement, there was no performance. It starts right out with the heading: "The following points should be incorporated in the proposed selling contract."

The COURT: I understand that.

Mr. RAICHLE: May 10th is many months after the other—

The COURT: I suppose Mr. Bernstein's argument is that while there was some contemplation of a formal agreement at one stage, and there were negotiations, allegedly, back and forth, that even though it never came to bloom, that is, as a written document, it became a working practice. I suppose that is your premise?

Mr. BERNSTEIN: Well, when we get through with this witness' cross examination I have other things to go on with, we will find out.

The COURT: On this specific thing, I think to use this memorandum not in evidence to discuss the whole picture with Mr. Koessler, I will permit it. In other words, Mr. Koessler's recollection—it wasn't his idea, he said so twice—those proposals, if they were made by Nicht, he is gone, he can't tell us, were not his, Mr. Koessler says. To that extent, I am going to permit it. You have an exception.

Mr. STEVENS: I do.

The COURT: You object to it generally?

Mr. STEVENS: That is correct. I would like to add, in addition, that the whole exhibit now marked P-71 was an affidavit which was used in connection with the preliminary motions, to which NEA was not a party, and therefore we never had an opportunity to examine anything in connection with that affidavit.

Mr. BERNSTEIN: Might I add one thing, your Honor? I have grave doubts that the Government offered this particular memorandum of May 10, 1955 in evidence during its part of the case. Nonetheless, it does fall within the

same category of documents. I wanted the Court to understand that some of these have been offered, some have not been offered.

By Mr. BERNSTEIN:

Q. Now, with respect to 5A-K of P-71 for identification, I note the words on top "copy for W. J. K." Do you know whether or not you received a copy of that?

A. No, I didn't receive a copy of that.

Q. Did Mr.——

A. That doesn't say that. It says "copy for F. J. Nicht." You mean D. W.——

Q. That doesn't mean copy for W.J.K.?

A. No, I think the copy is meant for Mr. D. W. Gortatowski, and he was the general manager and vice president of the old Hearst organization.

Q. That says "note to D. W. J."?

A. That is a note Nicht made.

Q. On top of that it says: "copy for ——" do you make
2075 that out to be W.J.K.?

Mr. MOORE: May it appear on the record that counsel is referring to a hand written notation on the top of a typed memorandum.

The WITNESS: It looks like L.J.K.

The COURT: In any event, you never got a copy?

The WITNESS: I never got a copy. I never saw a copy until this anti-trust suit started.

By Mr. BERNSTEIN:

Q. Going back then to paragraph eleven of P-16; I asked you whether Nicht had communicated his wishes with respect to paragraph eleven orally or in writing, and I believe you answered it was all in that memorandum.

A. I thought it was. If it isn't, then he communicated that orally. Maybe it is there if you look.

Q. We will look and see. Yes, paragraph eighteen says: "Be sure to try to include clause in our contract with I.C.P. and G.B.P.——" International Color and Greater Buffalo Press—"regarding a sale of the company. The clause should specify we would have an option to buy or be given preference over
2076 others." Is that correct?

A. Yes.

The COURT: Mr. Bernstein, that phraseology sounds to me as though Nicht is dictating memos to himself for the future.

Mr. BERNSTEIN: That is correct, and Mr. Koessler says—

The COURT: Those are his own thoughts when he gets around, if ever, to dealing with Koessler.

Mr. BERNSTEIN: That is correct.

The COURT: "Don't forget to do this," you want me to accept that against Koessler in this law suit?

Mr. BERNSTEIN: I respectfully offer the evidence, your Honor.

The COURT: That is another point that was made originally, these are some business man's musings of what is going to come about.

Mr. BERNSTEIN: Defense counsel made that point. The Government's point is that this reflects the state of mind of one of the parties to the transaction.

The COURT: I am going to resolve that now. Sustained. I sustain those objections to all that type of proof. However, if you want to cross examine Mr. Koessler and ask him if he recalls something of this nature over the years as occurring in a talk with Nicht, that is all right. I am now resolving this area. The objections to those notes of Nicht, in light of what has been said, sustained.

Mr. BERNSTEIN: Very well, your Honor. We offer 5A-K as an offer of proof as to the contents.

Mr. MOORE: What is the number?

Mr. BERNSTEIN: P-71 for identification, 5A-K.

By Mr. BERNSTEIN:

Q. Mr. Koessler, would you please glance at this memorandum dated May 10, 1955, and state whether or not that refreshes your recollection as to conversations that you had with Mr. Nicht prior to June 13, 1955, concerning provisions which he wanted included in the contract between King and Greater Buffalo Press, Inc.?

A. What was that?

2078 Mr. BERNSTEIN: Would you read it back?

(Thereupon the last question was read by Reporter.)

The WITNESS: Well, why don't we take them one at a time?

By Mr. BERNSTEIN:

Q. Does it refresh your recollection with respect—

A. I don't know, I haven't read them all. Take one at a time. I can't say.

Q. Let's take the first one.

Mr. RAICHLE: Let him look at it himself. Wait a minute, let him read it to himself and tell us whether it refreshes his recollection or not.

The COURT: And you say in whole or in part it does, Mr. Koessler. Read it all, move along. Read it all, and if it refreshes your recollection, in whole or in part, please say that. If it doesn't refresh your recollection at all, say that.

The WITNESS: Well, some of these things I recall, 2079 other things I don't recall.

By Mr. BERNSTEIN:

Q. Tell us what you do recall?

A. Well, I can recall he wanted to be—talked about being exclusive sales agent.

Mr. RAICHLE: I couldn't hear you.

The WITNESS: Mr. Nicht talked about wanting to be an exclusive sales agent. That the contract should be for five or ten years, I recall that. That the prices should be based on units of four, the prices that he wanted. He talked about the possibility of him swinging over the printing to us for the Hearst newspapers, did that several times. I remember this, that King could make arrangements with other printers, that this didn't have to be exclusive.

By Mr. BERNSTEIN:

Q. What paragraph refreshed your recollection on that?

A. Paragraph sixteen.

Q. What did he say?

A. "Try to have an understanding that K.F.S. can 2080 make arrangements with other printers in the event they can do better for us because of geographic locations." And the clause about the option to purchase.

Q. So as a result of those discussions, you set forth, you wrote him the letter P-16, is that correct?

A. Right.

Q. Digressing for a moment; you recall that Nicht had many times made representations to you that he would get you the Hearst business, is that correct?

A. Yes.

Q. And tell us, did you have sufficient—how many runs did that account for, approximately?

A. It was a great many in those days.

Q. Did you have the facilities to do it at Dunkirk at that time with your existing contract?

A. All of it, no.

Q. Where would you have to do the rest—excuse me—did you think that he was at all serious in that statement about getting the Hearst business?

A. Well, yes, I thought he was serious. I doubted that he was able to do it. I certainly thought he was serious, that he would try.

Q. You were anxious for him to try, is that correct?

A. Yes, we were anxious to get Hearst's business if we could.

Q. Did you give consideration as to where you would
2081 print the Hearst business?

A. We couldn't have done it all, we didn't have the capacity. We could have done some in Dunkirk.

Q. Where with the others?

A. Practically all of it would have had to be done in Dunkirk. They only had one other paper that could possibly be done anywhere, San Antonio in Texas, that would be four years away.

Q. Now, inviting your attention to P-17—

The COURT: What is your point, Mr. Bernstein? You claim they bought the Wilkes Barre plant under some promise to get the Hearst papers' work?

Mr. BERNSTEIN: The Government's contention is that the whole transaction concerning Greater Buffalo's acquisition of the International plant and the opening of Sylacauga and Lufkin was all one deal, as a result of discussions with Mr. Nicht, whereby Nicht had in mind and believed—this is the Government's contention—Nicht believed that Mr. Koessler was tell-

ing him 'That you will be our exclusive sales agent, we
2082 will be the exclusive printer,' and for that reason Nicht

wasn't going to put any road blocks in the way of the purchase of the International plant or the opening of Sylacauga or the opening of Lufkin, he was going to assist it because in Nicht's mind Greater Buffalo was going to be the printer, Nicht was going to be the seller, except for certain accounts they would allocate between them.

The COURT: He never got Hearst's business, did he, Mr. Koessler?

Mr. BERNSTEIN: I don't know. Did you ever get any of the Hearst business?

The WITNESS: Long after this law suit started we got some

of it, yes. There was not must to get in those days. That was not from Nicht or King Features, we got it ourselves.

The COURT: The other side of the coin is Mr. Koessler's version, that indeed he was growing, that he had the ability to take over old equipment, tired plants, refurbish them, 2083 run them cheaper, faster and better than others and, indeed, he is growing, he is looking for business constantly, and he buys this tired plant in Wilkes Barre, with the family in distress, with a large capital deficit, and he gives them a good price for it. Now, tell me what is inconsistent about good business, legal business, as I have described it and what you claim happened here?

Mr. BERNSTEIN: The difference is this; King was then Greater Buffalo's largest competitor——

The COURT: I know that. They were afraid he was going to storm them under by his ability plus his salesmanship in the feature game——

Mr. BERNSTEIN: That is right.

The COURT: ——not the printing game.

Mr. BERNSTEIN: It is the Government's position, the Government's contention, that both parties were wrong, that is why both parties were named in this suit.

The COURT: Why were they wrong?

2084 Mr. BERNSTEIN: For this reason, your Honor——

The COURT: What did they do? They might have——

Mr. BERNSTEIN: Here's what they did; beginning in——

The COURT: They might have thought about something.

Mr. BERNSTEIN: No, they did something, your Honor, they entered into an understanding, an understanding in the conspiratorial sense. A conspiracy or concerted action means a meeting of the minds between the parties to achieve a common objective.

The COURT: That is a question of fact for me to make findings on.

Mr. BERNSTEIN: That is correct. It is the Government's contention that both Nicht and Mr. Koessler had the common objective in mind that through the sale and purchase of International, neither King nor Greater Buffalo would any longer be competitors for the——

The COURT: Don't you think all the facts you have described are subject to two inferences, equal inferences; one, legitimate business practice, one of illegal business practice?

2085 Mr. BERNSTEIN: I do not, your Honor, but that is a legal question.

The COURT: It might be a legal question, I apply the fact-finding function. If I find that something hangs in the balance here, and I feel that the inference is—Nicht dead many years in the past—I feel there is a legal inference here that this was not a conspiratorial arrangement, whatever arrangement was made, do you agree that that inference has to be resolved in favor of the defendants here?

Mr. BERNSTEIN: I think the Government bears the burden of proving by a fair preponderance of evidence that there was concerted activity.

The COURT: I am looking for something a little crisper than I have had so far. I know you are not finished.

Mr. BERNSTEIN: Perhaps we will have it before the morning is over. This is a long story that has to be developed this way.

I am sorry.

2086 The COURT: I don't mind the time. I want you to know that I heard Mr. Koessler here, and it seems to me he is being extremely forthright, and I am looking for a little stigma to come in here that you can point to and say, 'There is something to hang your hat on.' Go ahead, please.

By Mr. BERNSTEIN:

Q. Mr. Koessler, you have Exhibit P-17 before you?

A. Yes. Do you want to show that to Mr. Raichle?

Mr. RAICHLE: I have it.

By Mr. BERNSTEIN:

Q. That is a letter you addressed to Mr. Nicht on January 17, 1956?

A. That is right.

Q. This is after Greater Buffalo has acquired the stock of International?

A. That is correct.

Q. And in the first sentence you say: "I am returning second draft of the proposed contract."?

A. Yes.

Q. You sent him a draft of a formal document, is that correct?

2087 A. No, he sent me the draft of the document. I told him I was returning the one he sent me.

Q. Did you return it signed or with notations or corrections or what?

A. I don't recall. It wasn't signed, I am sure.

Q. It was in the negotiation stage, is that correct? Look at the second sentence where you say: "The only thing I have changed is the exclusive commitments on the part of both parties."

A. Yes.

Q. What do you mean by that? Well, let's read the next paragraph too. "Our attorneys tell us this is dynamite. However, we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other business as is available, King Features to act as the selling agent and the Greater Buffalo Press as the producer." Now, does that refresh your recollection as to whether you made changes in Nicht's draft of the proposed contract?

A. I made some changes in that exclusive sales commitment.

2088 Q. Was that upon the advice of counsel, do you recall?

No. No, counsel didn't advise us on this. This is quite a story, I don't think you want to hear it.

Q. I would like to hear it.

A. Okay. These first letters of June—what is it—second?

Q. June 13, 1955.

A. —that we talked about and went over—

Q. P-16.

A. —everything in those letters were contrary to the interests of Greater Buffalo Press. We didn't want King as an exclusive agent. We didn't want to have anything to do with King other than to get some business on a competitive basis with him. They wanted these things. I wrote that letter to get Nicht off my back. I mean, he was the most tenacious guy. So I ran across Mr. Raichle, I remember it well, in the Statler Hotel. I told him about this problem. I said to him, "Frank, I don't think the things they want will be approved by the Law Department." And I said, "I wish you would let me know when you are going to be down in New York and I would like to go over with you to King Features, you tell them that."

Q. Which law department were you talking about?

A. The Hearst Law Department or the sales. Mr. 2089 Nicht and the rest of the people. So they ran a little luncheon as they always do down there and get everybody in an amiable mood. They had a half dozen people around there. They had Mr. — their legal counsel, I think his name was Mr. — an Irishman, McCluskey, and Nicht was there and he had all those other assistants, and Mr. Raichle told them he didn't think that this contract, based on the concepts of these letters, was the thing to do, that the Justice Department or the Anti-Trust Department, if they came across it at any time in the future, were not likely to approve of it, and the Hearst lawyers really took him to task about it. They said, "Do you mean to say that you can't sign an exclusive contract?" Mr. Raichle said, "No, I don't mean to say that, but with the way things are, and in view of the decisions, in view of the possibilities here, I don't think it's a wise thing to do and I am going to advise my client not to sign any contract along these lines." They were not satisfied with that, they had to get the opinion of some other lawyers. So they went and got their opinion and the opinion turned out to be what Mr. Raichle's opinion was, that it was something that shouldn't be done by King or by us. So we

called it off, at least we called it off. Then King got 2090 themselves another lawyer. It sort of sounds like the Joe

E. Lewis story, if you don't like your doctor get another doctor that lets you drink, things like that, that is what they did, they got themselves another lawyer, Mr. Archie Graustein. Mr. Graustein thought he could write a contract that would pass muster with the Justice Department. He wrote a contract or a proposed contract, let's put it that way, they sent it down to me. I didn't want to sign it, I didn't want to make any agreement. This is the reason for this letter, I sent it back to him.

Q. Thank you.

A. It went on for—it started in 1955, mind you, after their lawyers told them not to make any agreement. They kept needing me continually to get a new lawyer, 'We'll get some guy that knows about it, some guy with brains that can write one of these contracts that will get by.' This went on from 1955 until 1958. I was side-stepping, backing up, running away. We got a whole series of letters from all the Hearst executives from Berlin down to the bottom, 'get a hold of Koessler, make him sign this.' Do you want to see those letters? We've got them all here.

Q. I don't mind, if your counsel wants to offer them in evi-

dence as part of the redirect we'll be happy to put them
 2091 in the record. That is the purpose of your being here to-
 day, to find out. Mr. Nicht is dead. The only people we
 can find that out from is Mr. Nicht and yourself. It is important
 that the Court understand what the facts were. The facts are
 that as of January 17—

A. Mr. Bernstein, if you read all these letters you should have
 all these facts.

Q. That is right, but opinions differ as to the conclusions
 drawn from the facts, and that is why we need your explanation.

Mr. RAICHLE: Do you want to ask him a question? Go ahead.

By Mr. BERNSTEIN:

Q. P-17, dated January 17, 1956; I gather from what you
 just said that despite your reluctance and legal opinion that
 it is improper or it might be improper to enter into an exclusive
 agreement, you nonetheless returned the draft, striking out the
 clause concerning exclusive commitments, is that correct?

A. Yes. I didn't say we would sign it. I told him—I said, "This
 is something we won't sign."

Q. Right. Okay. You didn't tell him, 'Under no circumstances
 would we sign a contract,' you were continuing negotia-
 2092 tions with him, is that correct?

A. We did continue negotiations for three more years
 or two more years. That is, we were subject to listening to King,
 to continue negotiations.

Q. You had not broken them off, you were making revisions
 and corrections?

A. No, we were just saying, well, you know, 'If I get around
 to it, I will read it', we were stalling.

Q. All right. Now, you do say: "However, we consider the
 purpose and direction of our business relations—" that is, what
 you considered on January 17, 1956?

A. That is right.

Q. "—shall be to secure to King Features and the Greater
 Buffalo Press the contracts and business which they presently
 hold and to aid and assist each other in securing such other
 business as is available, King Features to act as the selling agent
 and the Greater Buffalo Press as the producer." Now, did that
 mean to you—did you intend to convey the impression to Mr.
 Nicht that as far as new business was concerned he was to be—
 the contract was to go with King Features and Greater Buffalo
 was to be the producer?

A. No, because we said there we had stricken out the exclusive commitments.

2093 Q. What did you mean by the language I just read?

A. What I meant by the language was that Greater Buffalo Press was going to hold on to its own accounts, not give them to anybody or let anybody get them, if they could help it.

Q. How about King?

A. King, on their part, were going to do the same thing.

Q. Greater Buffalo wasn't going to solicit King's accounts?

A. No, it didn't mean that. We did solicit them, we took them away. We had taken plenty by the time this letter was written in 1956.

Q. It didn't mean—your statement now is that when you used the language, "However we consider the purpose and direction of our business relations shall be to secure to King Features——" —I am omitting the next words— "—the contracts and business which they presently hold——", you did not mean to convey to him that you would not solicit those accounts?

A. No.

Q. Now, look at the next paragraph: "In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent." What did you mean by that?

A. I meant we—if there was any business to be gotten, we wanted to sell it, we wanted to have it as our own.

Q. But you say "by mutual consent"?

A. Well, you know, that is a nice way of saying that if it isn't by mutual consent, nothing is going to be.

Q. But you meant to convey the idea that King and Greater Buffalo would agree on which contract Greater Buffalo would act as selling agent?

A. I meant we were not going to come to any agreement with them.

Q. You say in the next sentence: "In such cases——" —that is, a case where Greater Buffalo may be designated by mutual consent to act as selling agent or negotiator— "—if the Greater Buffalo Press is successful in securing the account the Greater Buffalo Press will pay to King Features a minimum of fifty cents per thousand copies on the account thus secured." What did you mean by that?

A. I meant that King and Nicht always claimed they spent years trying to line up some of this business, that if some of these things in the future, these so-called potential jobs, were ever to develop that they had helped get them, not in cooperation or coordination with Greater Buffalo Press, but on their account they had helped sell these newspapers on the idea of somebody other than themselves printing comics, if we got one we would honor it in some way to the extent of fifty cents a thousand, their efforts in the past, not their efforts as combined with ours, their efforts in the past.

Q. Then in the last paragraph you say: "Prices and wage scales will have to be adjusted to the increase in the price of newsprint and adjusted to the 4% labor increases we have been subjected to for the year of 1956." I assume that you made some corrections in the proposed contract to accomplish that?

A. Could have been, I don't know.

Q. Going to P-18—

The COURT: Another letter?

Mr. BERNSTEIN: From Mr. Koessler to—

The COURT: I want to take a break here. You can read that casually during the recess. I am going to give you time to rest, though, as well. We will take a short recess.

(Thereupon the court was in recess at 11:05 a.m.)

2096 (Proceedings resumed, pursuant to recess, commencing at 11:30 a.m.)

By Mr. BERNSTEIN:

Q. I show you P-18, a letter you wrote on October 31, 1956, to Mr. Nicht. Now, this is some ten months later, and you say: "Dear Frank: This, in substance, is the position of the Greater Buffalo Press, Inc., as expressed at our meeting, Tuesday, October 23rd." Does this refresh your recollection as to the meeting that you had with Mr. Nicht?

A. No, it doesn't refresh my recollection. I don't remember the meeting.

Q. You say in the first paragraph: "The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate." Did that mean that you did not propose to solicit the business of those accounts that King then had under contract?

A. No.

Q. What did you mean?

A. It meant there were certain accounts that King had that you could not get away from them regardless of what you did. One of them I have in mind, that you might be interested in looking into, was in Washington, the Washington Post.

2097 Q. You say: "— will respect in every manner—", did you mean in every manner except you intended to let him know that you would nonetheless actively solicit those accounts he had under contract?

A. No, I meant we would exercise good intelligence, to know what jobs we could not possibly get, that we would not annoy either the newspapers or him by trying to get them. Do you want me to explain something about this business—

Q. Let's go on, I want to move along.

The COURT: You mean something unique about the newspaper business? You mean explain something that is unique about it?

The WITNESS: Yes.

The COURT: I would like to hear that.

The WITNESS: Well, in the comic printing business you have to get the features to go into the comics and King Features has rights to them, copyrighted features. They are very, very important to a newspaper. In the case of the Washington Post, the Washington Post was low on the totem pole, that is, they were the last paper in Washington. The Washington Star was the dominating paper in Washington. The Washington Post bought up the Washington Times Herald, which operated both the morning paper and an afternoon paper. The Washington Post is a morning paper. They bought the Washington Times Herald and when they bought the Washington Times Herald they bought or secured all the King Features editorial matter, the rights not only to the comics but the rights to all the columns, Walter Winchell, all the other columns that used to be or may still be important to newspapers. When they did that, almost overnight, within a— I guess it was overnight, the Washington Post became the dominant paper in Washington and still is. They run a couple hundred thousands more circulation than the Washington Star, and only because they got this feature material. The Washington Star is still a much better paper, in my opinion, news-wise, better edited, and locally they get better news. The only thing that differentiates these papers is the feature material, and the Washington Post got it, and that made

2099

them a dominant paper in Washington. We know that we can't go down to the Washington Post and solicit their comics on the basis of saving them say \$100 a week, and take a chance on losing this very valuable material that makes them the dominant paper. They wouldn't think of it, they wouldn't look at you. They might talk to you and be polite to you——

The COURT: You mean King would pull away the features?

The WITNESS: They could, they have said they would in instances.

By Mr. BERNSTEIN:

Q. Have they said they would with respect to the Washington Post?

A. That I don't know. They said they would in respect to other papers.

Q. Now, when you are talking about features, you 2100 don't mean only color comic supplements?

A. I mean all features.

Q. So that the power that the syndicate has over the features is not limited? If the syndicate is in the printing of color comic supplements, it has the opportunity to tie in the other features to the printing, is that correct?

A. Sell the feature package and the printing.

Q. You were concerned about that, insofar as King was concerned?

A. We certainly were concerned about it.

Q. Now, look at paragraph two of P-18. You say: "The Greater Buffalo Press will present King Features Syndicate with a competitive price, for its solicitation of new accounts." Do you recall that conversation with Mr. Nicht?

A. Well, I don't recall the conversation, but I recognize the letter.

Q. Paragraph three says: "The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business, which it secures by solicitation on its own account." You mean that the business which Greater Buffalo solicits on its own account, where 2101 Greater Buffalo has the contract with the newspapers, Greater Buffalo will share with King in the manner it has in the past, in the benefits derived from the new business, what did you mean by that, how were you going to share with King?

A. There were not too many new accounts to get. I'll give you one example, and it is the New Orleans Times Picayune. Mr. Nicht's memorandum refers to the fact that this is one of the accounts he wants to solicit, he wants to have exclusive rights to that. So I said, "Frank, we are going out and get that account on our own." He put up a big wail about the years they have spent trying to get it, the printing account, for their own, all the time they spent on it, the expense and everything, and he also said, "When you go get that business, if we can, we will tell them beforehand that if they give the printing to you instead of us it might increase the cost of the features, but even if you do get it, we can go back and increase the feature prices and get the money out of the features we should have got out of the printing." So to stop them from doing that, to annoy the customer, annoy the newspapers, annoy ourselves, we agreed in the case of this one paper to give them fifty cents a thousand.

Q. Is that what you had in mind when you wrote 2102 paragraph three?

A. Yes.

The COURT: Let me ask you this, Mr. Koessler. You were printing the comics for that Picayune?

The WITNESS: We were not, they were printing their own.

The COURT: Well, I mean if you got that. Did you also print these, I think you call them circulars, for the newspapers?

The WITNESS: Yes.

The COURT: These are the fold-ins you see?

The WITNESS: Yes.

The COURT: That had nothing to do with it?

The WITNESS: No.

The COURT: It had nothing to do with King?

The WITNESS: No.

The COURT: That was profitable?

The WITNESS: Yes.

The COURT: You were not looking to print comics, you had other items that you picked up along with that generally?

The WITNESS: That is right. They could be inserted inside the comic sections.

The COURT: Like Sears and Noah's Ark, and so forth?

2103 The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. Then in paragraph four you define new business, you say: "Our definition of new business is that which no operator

in the comic printing business presently holds." Is that correct?

A. Yes.

Q. So that meant if NEA—strike that. The last paragraph says: "Such an arrangement in my view protects King Features in its present holdings, gives the syndicate an even break in the securing of new business, and guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press." That last part guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press, and you were referring to the fifty cents or its equivalent per thousand?

A. Referring to a few jobs. Not every one happened that way. I have in mind the New Orleans Times Picayune, which was one. They were very few.

Q. I show you P-64 in evidence. P-64 is a copy of a letter that you wrote to Mr. McDowell, the publisher of the Lima News in Lima, Ohio, dated October 11, 1956. You say:

2104 "Dear Mr. McDowell: Our newsprint supply at this time does not permit our presenting a proposal on printing of comics for the Lima News. Thank you for calling upon us and I trust we may have such an opportunity at some later date." Who was printing for the Lima News at that time?

A. King Features, I think.

Q. Note the notation on the bottom of that letter, there is in handwriting "Betty, mail this to F. J. Nicht, King Features Syndicate, 235 East 45th Street, New York, New York." Do you recognize the handwriting there?

A. Yes.

Q. Whose is it?

A. Mine.

Q. Who is Betty?

A. Betty was a girl that worked in our office.

Q. What were your instructions to her?

A. Exactly that.

Q. To mail a copy of the letter?

A. Yes.

Q. Why did you want to mail it to Nicht?

A. To make him feel good.

Q. In what way?

A. The Lima News is a paper of 30,000 circulation.
2105 We were not competitive, this was a ready-print, we could not have printed it under any circumstances and

made a profit on it. King Features had the whole setup, the so-called make-ready. We just didn't print these kind of jobs. So when a man wrote in, the easiest thing to tell him was that there was a newsprint shortage and therefore we could not print it.

Q. It was your way of saying you were not interested in the business, in a polite way?

A. Yes.

Q. You wanted to show Nicht that you were turning down business that he was then printing, is that correct?

A. I wanted to show—yes—I wanted to show Nicht that we were really being generous to him and letting him retain something that he would retain anyway.

Q. Yesterday you were shown by Mr. Raichle D-4, your—what is the date of that, Mr. Koessler?

A. October 7, 1958.

Q. That is what, please?

A. What?

Q. Is that your letter to—

A. No, this is Nicht's letter to me.

Q. Nicht's letter to you?

A. Yes.

Q. He says: "I regret to have to tell you that the agreement which we sent you under date of July 31 has been dis-
2106 approved by Mr. Berlin." Now, I show you—I ask to be marked for identification an agreement.

(Thereupon document referred to was marked Plaintiff's Exhibit P-72 for identification.)

By Mr. BERNSTEIN:

Q. An agreement between Greater Buffalo Press, Inc., and King Features, and I invite your attention to the last page, paragraph 14. Does that say: "This contract shall be effective May 5, 1958"?

A. Yes.

Q. Now, note the October 7, 1958 letter Mr. Nicht sent to you, he talks about "the agreement which we sent you under date of July 31." Now, is he referring to the same agreement, the May 5th agreement, or is there still another agreement that was—

A. No, that is the same agreement.

Q. He is referring to it. When he said "agreement which we sent you under date of July 31", he meant even though it was

effective on May 5th, he physically mailed it to you on July 31st?

A. I can't understand that. Let's look into this a little bit.

Mr. BERNSTEIN: Will you mark this for identification, please?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-73 for identification.)

By Mr. BERNSTEIN:

Q. Let me show you a memorandum dated May 2, 1958, to Mr. Nicht from Mr. George C. Driscoll, and invite your attention to the first paragraph. He says: "Under separate cover I am forwarding you copies of Greater Buffalo contracts. These have been dated and signed by Walter Koessler." Now, by question is as to the date that you signed and returned to King Features the contract, P-72?

A. I signed this May 5th. It is obvious, I don't think I sent it to him, he sent Driscoll to get it, he was so anxious to get it. I would never have sent it back to him.

Q. You think Driscoll got it some time—Driscoll's memorandum is dated May 2, 1958, he said: "I am forwarding you copies of Greater Buffalo's contracts", what is your recollection? Is your recollection that Mr. Driscoll—

A. I don't recall how this happened.

Q. Would you please read the next paragraph and see if that refreshes your recollection?

Mr. MOORE: It ought to appear that you are reading from an inter-office communication of King Features.

Mr. RAICHLE: It is not in evidence.

Mr. STEVENS: Is that a marked document?

Mr. BERNSTEIN: Document Number 95.

Mr. MOORE: In the Government's possession.

Mr. STEVENS: Do we have a copy of 95?

Mr. BERNSTEIN: Yes.

Mr. MOORE: You are not positive.

Mr. FELDMAN: 95.

Mr. BERNSTEIN: So there is no misunderstanding among counsel, document 95 was submitted to counsel for all defendants prior to the trial of this action as a document upon which we would rely at the trial. It was not offered for identification nor in evidence at the Plaintiff's part of this case. It is now

being shown to the witness to refresh his recollection as
 2109 to the execution of the contract, and I question the
 witness about his own recollection, mindful of the
 Court's ruling—

Mr. RAICHLE: Does the document refresh his recollection in some regard or doesn't it? If it doesn't, that is the end of it.

Mr. BERNSTEIN: It is obvious that is the question, those were the words. I have asked the witness to read the second paragraph before he answers the question.

Mr. STEVENS: I would just like to make the statement that I am not sure that document was given to us. We do not have it now. We would like to have a copy.

The COURT: Here is apparently the point, Mr. Koessler, I am sure you probably have it in mind. There was a contract that didn't come off, I suppose the question is was there another one?

The WITNESS: No, there was not.

The COURT: No more written contracts passed between you, proposed, is that correct?

The WITNESS: Yes. This agreement here, Nicht refers
 2110 to it as July 31, the contract is actually signed in May.
 He apparently made a mistake.

The COURT: You say there was only one?

The WITNESS: One contract, that is it.

The COURT: That never came off?

The WITNESS: That is right.

The COURT: There was never a second one that passed back and forth?

The WITNESS: No.

By Mr. BERNSTEIN:

Q. Now, as to this contract that the Court refers to as never came off, that is, P-72, you did sign and deliver it to them, is that correct?

A. I signed that paper but I didn't consider it any agreement.

Mr. BERNSTEIN: May we submit this to the Court?

The COURT: That is the one that was rejected?

Mr. BERNSTEIN: That contract was signed May 1958, your Honor.

The COURT: By all parties?

Mr. BERNSTEIN: By all parties, yes, your Honor, and in

October it was canceled. From May to October it was in effect. That is different than saying it didn't come off.

It came off, it was canceled, that is the Government's view of it.

Mr. RAICHLE: It was never approved by the Board of Directors of either company or by counsel. It was conditionally delivered on both sides, if it was delivered at all by the Nicht side.

Mr. BERNSTEIN: That is what we are trying to find out from Mr. Koessler.

Mr. RAICHLE: The correspondence in evidence in the fall of 1958 makes that clear. I read those letters yesterday, you read them again today.

Mr. MOORE: That is in the Government's possession. This letter makes that clear.

The COURT: You can examine Mr. Koessler on it. He is a signatory to the thing. Go ahead.

By Mr. BERNSTEIN:

Q. Mr. Koessler, P-72 bears your signature, does it not?

A. Yes.

Q. And it bears the signature of Frank J. Nicht, General Sales Manager, does it not?

2112 A. Yes.

Q. It bears the signature of George C. Driscoll and Margaret Lutz, does it not?

A. If they mean anything, yes.

Q. Do you know Margaret Lutz?

A. No.

Q. She testified in this trial to being Mr. Nicht's secretary.

A. I now identify her. I didn't recall that.

Q. Mr. George C. Driscoll is the name of the man that appears—

A. He was a salesman for King.

Q. Did you know him?

A. Yes.

Q. Did you have a copy of this contract signed by Frank J. Nicht?

A. In our files?

Q. Yes.

A. I recall I did. We did, yes.

Q. Now, do you recall by looking at P-73, Mr. Driscoll's memorandum to Mr. Nicht, that in fact Mr. Driscoll did come

to Buffalo and spend most of the day and the night with you and was out to your home, went to dinner with your wife and you, do you recall that?

A. Yes.

2113 Q. And do you recall some mention during that conversation—do you recall Mr. Driscoll asking you for copies of the International Color Printing contracts with King?

A. No, I don't recall that.

Q. You don't recall that?

A. No. It says here I told him I didn't have them.

Q. Right.

Mr. RAICHLE: Never mind.

By Mr. BERNSTEIN:

Q. Did you have them?

Mr. RAICHLE: Testify from your recollection, what is the fact?

By Mr. BERNSTEIN:

Q. Did you have them, the International Color Printing contracts with King?

A. We could have had one in the safe somewhere, yes. I didn't personally have it.

Q. Were they with Joe Gorman in Wilkes Barre?

A. I think they were.

Q. Did you contact Joe and ask him to make up four or five copies to forward along to Mr. Nicht?

A. I don't recall that.

2114 Q. Do you recall—

A. Nicht had them, I don't know why he wanted me to tell Joe to make copies.

Q. Do you recall whether you invited Mr. Nicht to come up to Buffalo to take a boat trip?

A. No. I may have invited him, he never came.

Q. I mean do you recall sending that invitation?

A. I could have.

Q. Through Mr. Driscoll?

A. I could have.

Q. Do you recall whether or not Mr. Driscoll went down to your plant in Dunkirk?

A. That I don't know. He didn't go down with me.

Q. And note the last paragraph, do you recall—

Mr. RAICHLE: Wait a minute, the question is not noting the

last paragraph, ask him the fact, whether the document refreshes his recollection.

By Mr. BERNSTEIN:

Q. Mr. Koessler, would you note the last paragraph, please?

Mr. RAICHLE: He doesn't have to note the last paragraph.

The COURT: You mean read it, is that right?

2115 Mr. BERNSTEIN: Yes, read it to yourself, note it by reading it to yourself.

The WITNESS: "During my talk with——

Mr. RAICHLE: Wait a minute, I object to it.

The COURT: Read it. The question Mr. Raichle has is proper, does this memorandum of somebody else refresh your own recollection of an event? Somebody apparently had a version of something. By reading it is your own recollection revived?

The WITNESS: I don't remember.

Mr. RAICHLE: The answer is no.

Mr. BERNSTEIN: Excuse me——

The WITNESS: The answer is no.

By Mr. BERNSTEIN:

Q. What don't you remember?

A. I don't remember these references in this last paragraph.

Q. Do you recall whether or not Mr. Driscoll discussed New-
port News and Mr. Hornady with you?

A. No.

Q. Do you recall whether—do you recall the time that he was
at your house on this occasion?

A. Yes.

2116 Q. Do you recall whether you gave him the copies of
the contract at that time?

A. I don't recall giving him the contracts at all. I don't remember how these contracts got back to Nicht. All I know, they were a long time getting there, from 1955 until 1958.

Q. In any event, P-72 is dated effective May 5, 1958?

A. Yes.

Q. And Mr. Driscoll is talking about being with you some
time before May 2, 1958, or on or about May 2?

Mr. RAICHLE: I object to what Driscoll is talking about.

The COURT: Now, do you remember any visit with Driscoll?

The WITNESS: Yes, I visited with Driscoll.

The COURT: On the date mentioned by Mr. Bernstein?

The WITNESS: I don't recall the date.

Mr. BERNSTEIN: P-73 is offered in evidence for the sole purpose and limited only to establishing the report of the copies of the contract and the date.

Mr. RAICHLE: I object to it.

The COURT: I will look that over. I will reserve decision on it.

Mr. RAICHLE: There is a lot of other extraneous—

2117 Mr. BERNSTEIN: If counsel will stipulate those copies were forwarded on or about May 5, 1958, the exhibit will be withdrawn.

Mr. RAICHLE: I won't stipulate anything. I don't have to bargain for what I am entitled to.

The COURT: Let me look at that. I have never seen it before. Driscoll was an employee of Nicht's, right?

Mr. BERNSTEIN: Yes, your Honor, he is a salesman for Nicht.

Mr. RAICHLE: We concede the document got there anyway.

The COURT: I think you were suggesting before, Mr. Bernstein, that your line of proof is, I may be wrong, that there is another document that you believe existed between these people, one was rejected, another was floating around?

Mr. BERNSTEIN: The Government's contention of the facts now, in the light of Mr. Koessler's testimony, is that negotiations had been proceeding with Mr. Nicht as early as May of 1955, with respect to all of these items about exclusivity 2118 who was to take what customers, and fifty cents, those items of discussions had been proceeding up to 1958. In 1956, Mr. Koessler, upon advice of counsel, advised King that the exclusive feature was illegal. Nonetheless, these discussions continued and in 1958 it actually resulted in a formal contract signed by Mr. Koessler on one hand, and signed by Mr. Nicht on the other hand, that was actually in effect. In October there had been a formal cancellation of the contract or a formal advice that the contract had not been approved by the Board of Directors, therefore, as a legal proposition, was no longer legally binding on either one of the parties or had never been binding. The Government's contention is—and I want to examine Mr. Koessler along these lines, as to what the parties were actually doing as a result of their conversations and as a result of the understanding they had that had reached 2119 the point where they formally signed a formal contract. My question as to the July date—I was confused, I was trying to establish there really was no other contract. We have established that. We are talking about negotiations that had

been in the form of letters that stated these are the understandings among us up until 1958. In 1958 there was a formal document, it was effective from May until October, and in October it was cancelled. That is the Government's contention.

Mr. RAICHLE: Where are those letters?

Mr. BERNSTEIN: Would you mark this for identification, please?

(Thereupon document referred to was marked Plaintiff's Exhibit P-74 for identification.)

Mr. BERNSTEIN: P-74 marked for identification appears to be a draft of an agreement between Greater Buffalo 2120 Press and King Features. It is unsigned and it is undated, although in paragraph twelve it says: "This agreement shall run from September 15th—be effective as of September 14, 1967."

Mr. MOORE: Effective? Shall expire. Shall be effective—

Mr. BERNSTEIN: As of September 14th.

Mr. MOORE: "Shall run from September 15, 1957 to September 14, 1967, and thereafter."

Mr. BERNSTEIN: Paragraph 12 of P-74 says: "This agreement shall run from September 15, 1957 to September 14, 1967, and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of September 14, 1967 or as of the end of any such five-year period and delivered two years prior to the date as of which it is to be effective." The Government does not contend this agreement was ever signed.

By Mr. BERNSTEIN:

2121 Q. I ask you, Mr. Koessler, was that an earlier draft of P-72?

Mr. MOORE: I suggest that the witness is going to have to read that as against the other contract. This has never been shown to us before, this draft.

Mr. BERNSTEIN: I will withdraw the question. Will you mark this for identification?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-75 for identification.)

By Mr. BERNSTEIN:

Q. I show you P-75 marked for identification, a memorandum that bears the initials F.J.N. on the lower left corner, November 7, 1957, and ask you to please read the document

to yourself and then look at some of the notations in paragraph one, alongside of B, and then tell me whether you are able to state if this is an earlier draft of the agreement that you had considered?

Mr. STEVENS: Does P-75 have a number which we could use to locate it?

Mr. BERNSTEIN: 60.

2122 Mr. FELDMAN: P-74 is 60.

Mr. BERNSTEIN: I'm sorry, it doesn't have a number.

Mr. STEVENS: Thank you.

The WITNESS: I don't remember talking to Mr. Nicht about this, but this contract wasn't made by me, this was made by Mr. Graustein, the lawyer that was going to write up a contract that would conform to the Anti-Trust Laws.

By Mr. BERNSTEIN:

Q. You are talking about P-74 when you say this contract?

A. This is not a draft of a contract.

Q. You are talking about the piece of paper, P-74?

A. The piece of paper was drafted by Graustein.

Q. How about the contract, P-72, that bears your signature, who drafted that?

A. Drafted by Graustein?

Q. So then is it correct to say, based on your testimony earlier today about the advice you received from lawyers, that after they had consulted with Mr. Graustein, he drafted this contract, you signed it and returned it to Mr. Nicht, and then you learned that the Law Department of Hearst did not accept it, is that correct?

2123 A. No, I didn't learn anything. First of all, it was tentative, it wasn't an agreement. It was understood that I could submit this to our attorneys and I could submit it to the other people in our company, and the Nicht company could do the same. In the meantime, we considered the thing inoperative, it was, we didn't conform to it. I don't know whether they did or not, I don't think so. Then comes along this time when Nicht writes that letter and the thing is called off. We were happy to do it. Why was it called off? I don't know. I think maybe King Features, Hearst, got themselves a third lawyer who told them something different than the second lawyer told them, so they decided to call it off.

Mr. BERNSTEIN: Will you mark this for identification?

(Thereupon letter referred to was marked Plaintiff's Exhibit P-76 for identification.)

Mr. BERNSTEIN: P-76 for identification appears to be a letter from Mr. Nicht to Mr. Gortatowski, dated September 11, 1957, and it is offered together with P-74 and P-75 to 2124 establish the dates that this draft had been sent to Mr. Koessler and there was a discussion with Mr. Koessler concerning its contents.

Mr. RAICHLE: I don't mind the letter. I don't think the contract is admissible, the draft.

The COURT: Do you offer the draft?

Mr. BERNSTEIN: I offer the three to show the negotiations and conversations and discussions with the parties prior to the formal document.

The COURT: Mr. Raichle, he said he recognized some lawyer named something who drafted something. Overruled; I will receive it. Was it a New York lawyer, the fellow you were talking about?

The WITNESS: Yes, a Wall Street lawyer.

Mr. MOORE: I think if these are going in we should be entitled then to meet it with the other correspondence that went in at the same time. Mr. Bernstein is being quite selective.

The COURT: I expect a full disclosure on all documents having any bearing on this subject. I suggest you 2125 talk about it, and if there is more, you deliver them, Mr. Bernstein, anything that has a bearing at all.

Mr. BERNSTEIN: Yes, sir.

(Thereupon Plaintiff's Exhibits P-74, P-75 and P-76, previously marked for identification, were received and marked in evidence.)

Mr. BERNSTEIN: Will you mark these documents, please?

(Thereupon documents referred to were marked Plaintiff's Exhibits P-77 through P-88 for identification.)

Mr. BERNSTEIN: P-77 through P-88, your Honor, are documents that have been submitted to the Plaintiff by counsel for Greater Buffalo Press, Inc., with the representation that these are the documents that supplement the testimony of the witness with respect to P-74 in evidence. On that basis the 2126 Government offers them in evidence.

Mr. MOORE: I think the representation we made is that they are part of the correspondence which was offered by the Government.

Mr. BERNSTEIN: The Government offers them in evidence.

The COURT: I assume you want these in?

Mr. MOORE: Yes.

The COURT: Received.

(Thereupon Plaintiff's Exhibits P-77 through P-88, previously marked for identification, were received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, with respect to P-72, a contract that bears your signature and Mr. Nicht's signature; note paragraph one: "Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate (a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A,—" turn to Schedule A, 2127 Mr. Koessler, and note there we have the Dallas News fifty cents per thousand. Who is printing that today, if you know?

A. We printed it, we have always printed it, and we never paid King fifty cents a thousand.

Q. How about the Houston Chronicle?

A. We printed that from the beginning, still print it, never paid King fifty cents a thousand.

Q. How about the San Antonio Express?

A. We printed that from the beginning, still do, didn't pay him fifty cents.

Q. How about the New Orleans Times Picayune?

A. We paid him fifty cents a thousand for the reason I explained to you and to the Court.

Q. How about the New Orleans States?

A. There isn't any such paper.

Q. Was there at the time?

A. It didn't exist, we never printed it.

Q. That paper was inserted at King's request?

A. I presume so. Everything was King's request.

Q. How about the Shreveport Times?

A. That was one of the shakedown fifty-cent arrangements.

Q. What does that mean?

A. We took the job away from King and they said, "We are going to get our money back, we will go to the Shreveport Times and get the money out of the features that we didn't get out of the printing." So not to embarrass

the publisher and ourselves, we said, "All right, we will give you fifty cents a thousand."

Q. Insofar as the Shreveport Times is concerned, King had the contract with the Shreveport Times?

A. That is right.

Q. King had the contract not only for the printing but also to supply the features that were in the comic supplements?

A. I presume that is what they had.

Q. Do you recall?

A. I don't know, I never saw it.

Q. Do you know whether the Shreveport Times had any features other than King Features?

A. I think they did, I'm not sure.

Q. Just explain to the Court, please, what the procedure is; the customers in the newspaper business and the printing of color comic supplements, who gets the copyright from the syndicate, the newspapers or the printer?

Mr. RAICHLE: Nobody does, they get a license.

Mr. BERNSTEIN: Excuse me. I withdraw the question.

By Mr. BERNSTEIN:

Q. Who gets the license to the features, the newspaper
2129 or the printer?

A. The newspaper.

Q. And a newspaper sometimes has in the comic supplement King Features, NEA Features and some features of other syndicates?

A. Some of them have.

Q. Some of them have?

A. Yes.

Q. Some of them only have one syndicate's features in it?

A. Right.

Q. And some of them have several syndicates' features in them?

A. That is right.

Q. The newspaper has to get the license for those features and then he can engage Greater Buffalo Press or any other press to do the printing, is that correct, once he gets the license?

A. Yes.

Q. If he can't get the license, of course, the Greater Buffalo Press can't do the printing of the business nor any other printer?

A. That is correct, can't do the printing of those features if the publisher can't get the license.

Q. Did you make more than fifty cents a thousand on this Shreveport Times in the printing?

2130 A. I assume we did, yes.

Q. Approximately how much?

A. I don't know, I couldn't tell you. Some papers we made money on, some we didn't. Wound up overall making money. A very small amount, too, by the way, about 2 and 1/2 percent on our gross.

Q. Do you have any idea whether King was making at least fifty cents a thousand on these papers at that time?

A. They were making more than fifty cents a thousand, I am sure.

Q. Can you——

A. I'm not sure, I think they were.

Q. Can you explain this, Mr. Koessler; did you have any discussion with Mr. Nicht, or can you suggest from your experience in the printing supplement business, why would King forego the right to make the profit on the printing, get the whole contract and make more than fifty cents a thousand, why would he forego that right, let you do the printing and accept fifty cents a thousand?

A. We took the job away from him, he didn't have any control over it.

Q. He did have control if he denied them the features?

A. Well, control over taking those features out of the paper.

2131 Q. You are talking——

A. He couldn't sell them to anybody else in Shreveport, there is no other paper there.

Q. So in Shreveport he did not have control, he would not have been able to license the features if he took them away?

A. He could not sell them to anybody else, no.

Q. So therefore Greater Buffalo could have gotten the business without paying the fifty cents a thousand?

A. What do you mean we could have, we don't know. Nicht can go back and raise the price of these features, the publisher doesn't have to pay it.

Q. I understand that, Nicht can raise the price of the features. Nicht can deny licensing to the features?

A. That is right.

Q. If Nicht—I am trying to get the business reasoning—if Nicht denies licensing the features, then the newspaper is going

to print with Nicht and Nicht is going to make more than fifty cents a thousand on it?

A. The newspaper decided to give the contract to us. Now, maybe they didn't know, maybe they didn't think Nicht was going to stick them up.

Q. I see.

A. They found out afterwards. We have some letters to that effect, too.

2132 Q. How about the—when did this conversation with Mr. Nicht—

A. I don't know when it happened, some time in this period.

Q. Some time around 1958?

A. I presume so, before we began to print or after we began to print the sections.

Q. How about the Monroe World?

A. That is part of the Shreveport Times, that is the same deal.

Q. How about the Waterloo Courier?

A. We explained that, that was for the features, not for the commission on the printing.

Q. That is Waterloo, Iowa?

A. Waterloo, Iowa, yes.

Q. That is \$1 a thousand, we talked about fifty cents a thousand?

A. Yes. The difference between paying Nicht for features and just paying him a commission on the printing. His price on supplying the features was \$1.

Q. How much do you pay him today?

A. I think it's still fifty bucks.

Q. Fifty dollars or fifty cents?

A. Fifty dollars a week, I think. It isn't a question of how much per thousand, it is a flat price of fifty dollars a
2133 week.

Q. And the Elmira Telegram?

A. That was one of these feature arrangements.

Q. Who was printing that, who had been? Who had been printing it, King?

A. I don't recall. I think they were printing it themselves, if I remember.

Q. You offered to pay fifty cents a thousand for what purpose?

A. For the purpose of not having them raise the price of the features.

Q. Do you know whether they were using King's features?

A. Sure they were.

Q. How about the Wichita Falls Times?

A. That was part of the Harte Hanks papers.

Q. The Harte Hanks Newspapers?

A. That was the same thing, we took it away from King, they threatened to raise the price of the features. They actually did raise the price of the features to the publisher there. They got it from both of us.

Q. Are you still paying the fifty cents on Harte Hanks?

A. I think we are.

Q. How about the Calgary Herald?

A. I don't think we paid anything on that.

Q. Which of the papers on Schedule A are you still
2134 paying King for?

A. We are paying it on the New Orleans Times Picayune, the Shreveport Times, the Monroe World, which is part of the Shreveport Times, the Waterloo Courier, the Elmira Telegram and the Wichita Falls, and Harte Hanks papers. One, two, three—there are four papers out of the four hundred and some papers we print.

Q. Now, reverting to paragraph one (b) of P-72. Paragraph one (b) says that the parties agree "with respect to any new sale by Press to an account not listed in Schedule A—"—then there is an exception in there—"—and present accounts of the Papert Newspaper group a commission of fifty cents a thousand." In other words, by this document you were agreeing to pay fifty cents a thousand with respect to any new sales that Greater Buffalo made, with the exception of sales to Scripps Howard newspapers and its affiliated papers, and with the exception of those papers listed in Schedule A, which you pay in accordance with the amount listed in Schedule A, is that correct?

A. No, we went out and took business from King, we got it on our own account and never paid him anything.

Q. You had told him by this document that you would?

A. We didn't, we repudiated the document.

2135 Q. Note paragraph five: "Syndicate—"—that is King Features—"—agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supple-

ment printing requirements at the time) either with Press or with International Color Printing Company of Wilkes-Barre, Pennsylvania, or both." That is the same kind of provision that is in the agreement?

A. Nobody intended to honor that. King was running around to Eastern Color, they were running around to Star Color Press and to other people, trying to place their business with these other people, trying to get prices from them. They didn't intend to give us the business. They intended to give us the business, not the comic printing business.

Q. I note that paragraph five, in any event, has the same kind of provision they have in their contract with International—I withdraw the question, we will develop that later.

A. Let me correct the statement on the contract. We repudiated the so-called contract, the copy of the contract, after King did. They were the first ones to do it.

Q. Yes. That is what the——

2136 A. That is what the letter says.

Q. That is what the letter says. The letter——

A. And we were happy about it.

Q. The letter—it's D-4, or something like that—dated October 7, 1958, says: "I regret to have to tell you the agreement which we sent to you under date of July 31 has been disapproved by Mr. Berlin. In view of this fact I am sure that the Board will not approve or ratify it and, therefore, I must ask that you consider it to be no agreement." Then you wrote back to him and said: "I have had no opportunity to present this agreement to our own Board of Directors for their approval. Upon receipt of your letter I presented it to an informal meeting of the Directors and they disapproved. Since the agreement has not been approved and cannot be approved by either corporation, it must be considered void and no agreement." Is that correct?

A. Right.

The COURT: Mr. Bernstein, I think we will recess for lunch. Two o'clock, if you please.

(Thereupon the court was in recess at 12:35 p.m.)

2137 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: Will you mark for identification a document numbered as 112, May 5, 1958.

(Thereupon document referred to was marked Plaintiff's Exhibit P-89 for identification.)

Mr. BERNSTEIN: I want for identification just the first page of this document.

Cross examination by Mr. BERNSTEIN: (Contd.)

Q. Mr. Koessler, P-89 for identification bears your signature and the signature of Mr. Nicht, dated May 5, 1958, and it says: "This is to confirm that while in our agreement with you of even date there is a provision that we will sell our printing services to new accounts at no lower prices than those 2138 listed in Schedule B plus fifty cents per thousand, it is also a part of the agreement—" —there are several provisions pertaining to that— "—will you confirm this understanding?" Do you recall the circumstances under which this was executed?

A. No. This is another one of these things Mr. Graustein wrote, some kind of a thing they wanted and—

Q. You signed it, sent it back to them?

A. With the contingency that, like the other thing I signed here, the so-called contract, it had to be approved by our lawyers and approved by the other people.

Mr. BERNSTEIN: I offer it in evidence.

Mr. RAICHLE: Let me see it? All right.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-89, previously marked for identification, was received and marked in evidence.)

The WITNESS: I think there is a reference to that in these letters that Mr. Graustein wasn't very sure that I would sign anything like that, but try him out anyway.

Mr. BERNSTEIN: I saw some reference to that.

2139 By Mr. BERNSTEIN:

Q. Can you explain this, Mr. Koessler; P-88 in evidence is a letter from Mr. Nicht to Mr. Gortatowsky, it is dated July 22, 1958, and he said: "Last April, when I obtained Mr. Koessler's signature to our sales contract, you suggested I consult Mr. Graustein." Is he referring to that May 5th contract that you signed in April?

A. Wait a second, Mr. Nicht wrote this letter. Am I supposed to account for what he wrote?

Q. No. I don't want to press it, I wondered. Those dates are confusing. I saw this letter for the first time this morning, I was wondering whether you could shed light on it?

A. No. Charge it up to Nicht, who you say was a meticulous note-taker.

Q. You don't know whether it refers to this contract or something else?

A. It refers to this one, there was no other one.

Mr. BERNSTEIN: Will you mark for identification document number 57, please?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-90 for identification.)

2140 By Mr. BERNSTEIN:

Q. This is a memorandum dated July 26, 1957. I ask you to read the first paragraph, and I ask you whether that refreshes your recollection of a conversation that you had with Walter Koessler and Joe—excuse me—that you had with Mr. Frank Nicht and Joe Gorman at the Ritz-Tower Hotel concerning the pending contract?

A. I don't remember these meetings or what was talked about. Did I meet Mr. Nicht at the Ritz-Tower at some time or another, yes, I did.

Q. With Mr. Gorman?

A. Probably so. I don't recall meeting him with Gorman or whether Gorman was there.

Q. Do you recall ever, during these negotiations for this contract, Mr. Nicht saying to you that what he wanted first of all is the protection of King Features' business and that the contract will accomplish?

A. He was always saying that. He was certainly looking for that.

Q. Right. Do you recall him telling you that there should be a favored nation understanding?

A. What?

Q. A favored nation understanding?

A. I don't know what that means.

Q. You don't recall any conversation that his price
2141 was to be any higher than anybody else's price?

A. It wasn't. I should think it means his price should be lower than somebody else's.

Q. And—

A. To be a favored nation, which it was not.

Q. Do you recall his discussing with you a prospect list and the South Bend Tribune?

A. No. The South Bend Tribune is a paper that still prints its own comics.

Q. Do you recall any discussion with Mr. Nicht about it?

A. I have talked about printing the South Bend Tribune comics with many people, including him, including South Bend, too, by the way.

Q. You did talk to Nicht about it?

A. I could have, I don't recall.

Q. Do you recall discussing with him a commission on the Lake Charles business?

A. No. No commission paid, to my knowledge.

Q. Do you recall saying to him that Nicht will get a commission on Dallas, San Antonio and Houston?

A. I could have said that to him but the fact is we never paid it.

Q. And do you recall discussing with him at the Ritz-Tower Hotel a commission on all the Lufkin business and your saying that there was so little margin in the Papert business 2142 that you could not pay a commission on it?

A. Well, I really don't remember these individual things, no. The fact is that we didn't pay him any commission on the Papert business.

Q. Do you remember having a discussion—look at page two—do you remember having a discussion with him about closing the Peoria plant?

A. No.

Q. Look at the next to the last paragraph. Do you remember discussing with him \$1500 for a legal fee?

A. Yes. That is the one that he asked for—to get the opinion on whether the Hearst contention that their—to get an opinion on whether Mr. Raichle was wrong in his judgment as to advising us and them not to enter into some contract, this contract that was talked about.

Q. They submitted an invoice to you?

A. We paid half of the price of the opinion.

Q. And also paid your own legal fee?

A. Yes. I think they were paid.

Q. Because in this paragraph it refers to the fact that you had a bill from your own lawyer, you paid that, I take it, and

then you also paid half of the bill that King submitted
2143 to you?

A. I am sure.

Mr. RAICHLE: What happened was—let me tell it to you off the record——

Mr. BERNSTEIN: I don't mind putting it in the record, Mr. Raichle.

Mr. RAICHLE: What happened was that I took the position that the proposals emanating from King Features were subject to the criticism, and they might offend against the Anti-Trust Laws, giving my reasons for it. Their lawyer was firm in his assertions that such was not the case, and they asked Mr. Koessler, in my presence, if they got a third lawyer, an independent lawyer, so to speak, to give an opinion, would he then reconsider his refusal to go forward, which was based on my opinion, and this charge is evidently for the so-called independent lawyer's fee, half of it. Isn't that it?

The WITNESS: Yes.

Mr. RAICHLE: I might say, as a matter of interest—I won't say my embarrassment—to my somewhat amazement,
2144 the independent lawyer turned out to be a member of General Donovan's firm, with which I was formerly associated, and that gave rise to some conversation on the subject.

Mr. BERNSTEIN: I offer P-90 in evidence, your Honor. This has not been offered before. It is the same type of document, a memorandum made by Mr. Nicht, reporting the events of the conversation as of that date.

Mr. RAICHLE: I object to that. Your Honor ruled on that.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: I have already ruled that out.

Mr. BERNSTEIN: I wanted to make the offer for the record.

The COURT: Sustained. I am going to let you refresh Mr. Koessler, if he has any recollection that is refreshed by the events allegedly recited in there.

Mr. BERNSTEIN: May the Government reserve the right to argue the merits of this later on more conveniently?

The COURT: I have passed on the merits before, and
2145 until I heard certain of the notes, which to me are clearly characterized as nothing but musings of Nicht, notes to himself of things to be done, I had a question. I don't have it any longer. I sustain the objection.

Mr. BERNSTEIN: I understood your Honor's ruling to pertain to those kind of documents where Nicht makes notes to himself as to things to be done. I was distinguishing this document as a note of what had been done, and the witness testifies that many of these things were in fact so, and Mr. Raichle confirms that these events were so.

The COURT: I meant to sustain the sweeping objection to that type of document in its entirety. Here is a man—Nicht is gone—here is a man that you can probe, using those, to see whether he would agree somebody's thoughts jotted down are his now.

Mr. BERNSTEIN: I don't want to burden the Court. I do want to preserve the Government's position. This document is
2146 being offered as a declaration of a co-conspirator on the grounds that it sets forth—if the conspiracy is proven, it sets forth the declarations of one of the parties to the transaction, as to what he said, what statements he made on a particular date, and what statements were made to him on that date by the—

The COURT: I ruled on that. If, after the evidence is closed, you can persuade me that there is something in the case that that proposal fits into, such as the conspiracy was continuing, that Koessler entered into it knowingly, purposely, with intent to participate, I will give you a chance to argue that. I don't want them coming in as business entries because I don't think they are.

Mr. BERNSTEIN: Very well, your Honor. Will you mark document 161 for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-91 for identification.)

2147 Mr. BERNSTEIN: This is the same kind of document I offer it.

Mr. RAICHLE: Same objection.

The COURT: Same ruling.

Mr. BERNSTEIN: Please mark for identification a letter from Mr. Koessler to Mr. Houston Harte, June 17, 1954, identified as document 176.

(Thereupon letter referred to was marked Plaintiff's Exhibit P-92 for identification.)

By Mr. BERNSTEIN:

Q. Mr. Koessler, P-92 is a letter from you to Mr. Houston Harte of the Harte Hanks Newspapers in San Angelo, Texas.

You say: "Dear Mr. Harte: On my visit to Lufkin, Texas, on June 3d I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Company beginning with January 1, 1957." Was that for the proposed Lufkin plant?

A. Yes.

Q. So that on June 3, 1954, was that the first time that
2148 you had made definite plans to open the Lufkin plant?

A. No.

Q. When was it?

A. 1953-1954 some time. This was when we were ready to open it.

Q. Were you ready to open it in 1954?

A. No. We were planning, we had to build a plant, make all our plans. That is when we planned for it, finally opened it in 1958.

Q. Right. So in the next sentence you say: "We are completing plans for the building to house the color plant at Lufkin." At that time you didn't have the building. What plans did you have to complete at that time, I mean aside from the building plans, what business plans?

A. Well, plans for the presses, what machines you were going to put in there. It takes a long time to plan the building.

Q. Were you doing that at that time?

A. Prior to that time, yes. Apparently they were complete then.

Q. In your next sentence you say this to Mr. Harte—who was he with relation to the Harte Hanks Newspapers?

A. He was the owner of a group of newspapers, proprietor, publisher.

2149 Q. When you say "group of newspapers", these were small runs?

A. Yes, relatively small.

Q. Did the combined group make a large run?

A. About two hundred some thousand.

Q. Was that considered a large run?

A. Considered a fairly good run.

Q. You tell Mr. Harte: "We have reached an agreement, verbal and tentative, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the southwest area. It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period."

A. Right.

Q. "I will keep you informed on the progress of our operation at Lufkin. Thank you for the assistance you have given our company on this matter." What agreement were you talking about, that you told Mr. Harte about?

A. I told Harte not to sign up with King, we intended to go out and get his business ourself, which we did.

Q. You say in the third paragraph that you have reached an agreement, verbal and tentative in character, with Frank
2150 Nicht to print the sections that the syndicate has under contract in the southwest area?

A. That means we were talking about it.

Mr. BERNSTEIN: Will you mark this letter dated July 1,—

The COURT: Mr. Koessler, I gather from the tone of that letter that you had talks with this man before the letter followed?

The WITNESS: Yes.

The COURT: In other words, you thank him for his cooperation, you were referring to other—

The WITNESS: We would like to do his business individually, not through King Features, we hoped we would get some business from King too. We were looking for everybody's business.

The COURT: This was not your first communication with this man, you had chatted about business with him before?

The WITNESS: Mr. Harte? I am sure I had.

By Mr. BERNSTEIN:

Q. This wasn't the first communication with Mr. Nicht about opening the Lufkin plant, was it?

A. I don't know.

2151 Mr. RAICHLE: This wasn't a communication with Mr. Nicht.

The COURT: Mr. Bernstein, I wanted to know from Mr. Koessler whether there had been some talk, seeking this newspaper chain, whatever you call it, business, other than that written communication because the tone of the letter indicates there was and indeed there was, is that right?

The WITNESS: That is right.

By Mr. BERNSTEIN:

Q. And the Government wishes to make the point; June 17, 1954 was before Greater Buffalo purchased International, is that correct?

A. Yes.

Q. You were then in competition with King, is that correct?

A. Yes, this letter proves it, we did take the business away from King.

Q. You were in competition with King for the Harte Hanks Newspapers?

A. Indeed we were.

Q. You told Hanks that you had reached an agreement with your competitor, King, to print the sections that King 2152 has under contract?

A. I didn't say that, I said we talked to Nicht about printing some of his sections. That is what it says.

Q. "We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate to print the sections that syndicate has under contract in the southwest area."

A. Doesn't that mean exactly what I said, we talked to him. Verbal and tentative, maybe we will, maybe we won't.

Q. If Harte Hanks signed a contract with King to print the supplements, Harte Hanks would understand from this letter that Greater Buffalo would do the printing?

A. No. We say specifically here that we hope he wouldn't sign a contract, don't we?

Q. You say: "In the meantime, I would appreciate your limiting your agreement to King Features to its present period."

A. That is right, we didn't ask him to cancel his contract, we asked him not to sign a new one or renew one.

Q. If you had signed a contract with regard to King putting the business in the Lufkin plant, if you had signed that contract—

A. We didn't.

2153 Q. I know. If you had, then you would have no objection to Harte Hanks making a contract with King because Greater Buffalo would do the printing?

A. Have I got to make these conclusions, if I would do this it follows that would be true?

The COURT: I think that is subject to, perhaps, your interpretation. To me, particularly when there was other negotiations proceeding that, there was a request by Koessler to give him, Koessler, a chance to compete. That is one other interpretation, as I view it.

Mr. BERNSTEIN: Does your Honor wish to see the document?

The COURT: No. Now, you heard my last comment; is that

what you meant, that you wished them not to tie themselves up with King?

The WITNESS: Yes.

The COURT: You had proposals to make to them?

The WITNESS: Exactly.

The COURT: I don't want to dream up the answer, that is what I think it says.

The WITNESS: That is what the letter says, that is 2154 what I intended it to say.

Mr. BERNSTEIN: Will you mark these three documents as one exhibit?

(Thereupon documents referred to were marked Plaintiff's Exhibit P-93 for identification.)

Mr. BERNSTEIN: P-93 for identification consists of three letters. The June 17, 1954 letter being a copy of a letter from Mr. Koessler to Mr. James F. Chambers, Junior, Vice President and General Manager of the Dallas Times Herald in Dallas, Texas. June 21, 1954, being a letter from James F. Chambers, Junior, Vice President and General Manager of the Dallas Times Herald to F. J. Nicht; and July 1, 1954 being a letter from Mr. Nicht to Mr. Chambers.

Mr. STEVENS: Do those have identifying numbers so that we can locate them?

Mr. RAICHLE: No objection.

Mr. MOORE: Offer them without the comments on 2155 them.

Mr. BERNSTEIN: I offer these in evidence without the handwritten notations on them, your Honor.

Mr. STEVENS: May I see them, please? Thank you.

Mr. RAICHLE: We have no objection.

Mr. STEVENS: We have a general objection for NEA.

The COURT: I will receive them.

(Thereupon Plaintiff's Exhibit P-93, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Will you mark for identification a memorandum of August 16, 1954?

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-94 for identification.)

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, inviting your attention to the period of August 11, 1954. This is prior to the Greater Buffalo acquisition of International?

A. August 16th.

Q. 1954, is that correct, and that is prior to Greater
2156 Buffalo's acquisition of the International stock, is that correct?

A. Yes.

Q. That is when you were competing with King, is that correct?

A. Yes.

Q. Now, I ask you whether you recall on August 11 or somewhere around that time Mr. Burns and Mr. Nicht met with you at your office and discussed a rate scale for the Toledo Youngstown and Erie runs?

A. Yes.

Q. And did Greater Buffalo turn those runs over to Greater Buffalo Press?

A. Turn them over to Greater Buffalo Press?

Q. Did Greater Buffalo print them?

A. Yes.

Q. For King?

A. Those were the ones he took away from Gorman.

Q. King had a contract with International that International would be its exclusive printer—

A. Right.

Q. Except for 75%?

A. I don't know what the contract was, anyway he took them away from Joe.

Q. He took the printing away, in other words, International was printing less by Nicht's turning over to
2157 Greater Buffalo for printing the Toledo, Youngstown, and Erie runs?

A. Sure they were printing less.

Q. International was doing less business?

A. We had nothing to do with International.

Q. Greater Buffalo was doing more business, printing business, by those three runs?

A. That is right.

Q. Greater Buffalo had taken the printing business from International by this transaction, is that correct?

A. Yes. No—taken it away—wait a minute, King Features took it away from International, we didn't. King Features gave it to us. King Features took it away from International, not us. We didn't have the power to take it away.

Q. You didn't have the power to take away any contract that any syndicate had with a printer?

A. No.

Q. You could induce the syndicate to do business with you rather than another printer, and in this case you induced King to do business with Greater Buffalo rather than with International Color Printing?

A. I think they induced themselves, they came to Buffalo to do this.

2158 Q. In any event, those three runs were then printed for King at Greater Buffalo?

A. That is correct.

Q. Now, do you recall when this happened, Mr. Koessler, do you have an impression?

A. Some time about this time, I haven't the least idea when.

Q. Do you recall that you then told them that nothing happened to change your plans regarding Lufkin, that you were going ahead with them, and you expected them to be under way by the latter part of 1955, and certainly by January 1, 1956?

A. No.

Q. You don't recall that?

A. No.

Q. What do you recall about your conversations with Mr. Nicht concerning opening Lufkin?

A. I don't recall that I discussed it with him. I didn't want to, I know that. I didn't want to talk to him about anything that had to do with Lufkin. We thought that was our own plans.

Q. Did Mr. Nicht at that time indicate to you what he had in mind in the south?

A. No.

Q. He did not or you don't recall?

2159 A. He did not. I don't recall that he did. I have no recollection of it, put it that way.

Q. This memorandum purports to report what Mr. Nicht indicated to you—

Mr. RAICHL: Wait a minute. I object to him telling what the memorandum purports to show. It speaks for itself or does not speak at all. Your Honor has ruled that it does not speak.

The COURT: No. This is the same area again, somebody else's notes. If Mr. Koessler has any refreshment of his recol-

lection by reading that, as I believe he has done, ask him specifically, paragraph by paragraph, if having read it it refreshes his recollection, does he agree with any of the terminology.

By Mr. BERNSTEIN:

Q. Mr. Koessler, do you recall whether or not you talked with Mr. Nicht about Eastern and World Color?

A. No.

Q. Do you recall whether you expressed any thoughts about—strike it out. Do you recall whether Mr. Nicht discussed with you, asked you if he could make a deal with you for the printing of the Atlanta National and Miami runs?

A. I don't recall it at that meeting. The only thing I recall, that he wanted to get the prices we would print Toledo, Youngstown and Erie runs for. He didn't give us the business at that time, as I recall. We gave him the prices at that time.

Q. Is the second paragraph true?

A. "We worked out——", but he didn't work it out at that meeting; we gave him prices. Nicht would never give you an answer about anything and he didn't give us an answer then. Ultimately we did get those runs.

Q. Ultimately was the second paragraph true?

A. Ultimately we got the Toledo, Youngstown and Erie runs, yes.

Q. Did you——

A. The third paragraph there, as I say, I don't recall that, but the information is completely wrong. We couldn't possibly expect to start a plant in 1955. We actually didn't get the plant started until 1958, so it must have been wrong.

Q. It must have been you had plans for opening at the latter part of 1955?

A. No.

Q. I am talking about your own recollection?

2161 A. Did we have plans to ourselves that we were not conveying to Nicht? Sure we did.

Q. You did have plans to open in the latter part of 1955?

A. No, we—no, we knew we couldn't open in the latter part of 1955.

Q. On June 17, 1954, you said to Harte Hanks that you were completing plans for the building to house the plant at Lufkin, and you say it will be some months before we are operating in Lufkin.

A. That is 1957 you are talking about.

Q. No, 1954, June 17th, I am referring to P-92.

A. It says beginning with January 1957 we signed a paper contract. Is that what it says?

Q. Right. You said it will be some months before we are operating in Lufkin; some months after January 1, 1957, is that what you mean?

A. Exactly, and many months.

Q. What is revenue from molding?

A. Well, it's a little private racket King Features operated. We developed methods by which we could assemble these features in one page on the press, and we didn't need King Features to mold extra mats for these newspapers. They used to—before our idea came along they used to mold a mat for every 2162 page on which a feature was changed. When we developed our method they didn't have to do that. So that we—the newspapers should have been saved a lot of money, but Mr. Nicht wanted to go on charging them for it whether we did it or not.

Q. Did he?

A. That is what the gentleman is talking about there, he did.

Q. And he discussed that with you on—well, is that part of the memorandum true?

A. I don't know, I haven't seen it.

Q. That is on the 9th paragraph down?

A. I haven't got it here.

Q. Excuse me.

A. Oh, apparently—I don't remember talking about this but if you want to know what the story was, he didn't want us to peach on him to the newspapers. Mr. Nicht didn't want us to peach on him to the newspapers because he was charging them for services he was not performing.

Q. And he told you about it?

A. He told me he was.

Q. And—

A. He—

Q. Did he ask you for transportation rates to Richmond and Bangor, in the next to the last paragraph?

2163 A. He may have. I don't recall that.

Q. Did you ever get the contract for the Kansas City

Star?

A. Yes.

Q. The St. Louis Globe Democrat?

A. Yes.

Q. Were they printed at Buffalo?

A. Yes.

Q. Did you ever transfer them to Lufkin?

A. Yes.

Q. When?

A. I don't know what year. I wouldn't tell Nicht the truth in these things.

Mr. BERNSTEIN: Your Honor, I offer P-94 in evidence as a similar type of document.

Mr. RAICHLE: Objection.

Mr. STEVENS: Objection.

The COURT: Sustained.

Mr. BERNSTEIN: Will you mark this, please?

(Thereupon a letter referred to was marked Plaintiff's Exhibit P-95 for identification.)

By Mr. BERNSTEIN:

2164 Q. Will you look at P-95 for identification, which is a letter you wrote to Mr. Nicht on August 27, 1954, which is eleven days after the memorandum that Mr. Nicht wrote on August 16, 1954, and does that refresh your recollection as to whether or not you might have been mistaken about your discussion of the Lufkin plant with Mr. Nicht?

A. What do you mean?

Q. Well, on August 27, 1954, you say to Nicht: "Dear Frank: I have not even discussed the Texas plant with NEA. It is our plan to develop the new accounts along the lines discussed with you, and to handle the accounts you serve in the manner in which we have talked about. This, as I see it, covers all the business in the area, present and future." On August 16, 1954, Mr. Nicht reports that on August 11th he spoke——

Mr. RAICHLE: Objection, he is reading from another memorandum that is excluded. Wait a minute, I object to this.

Mr. BERNSTEIN: This is cross examination.

Mr. RAICHLE: It is improper cross examination. He is trying to put in the record one of these Nicht memoranda, through the back door.

2165 The COURT: Have you asked Mr. Koessler about the specific time, date and thing previously that you are going to try and connect up?

Mr. BERNSTEIN: Yes.

The COURT: Do it again, referring to Nicht's memorandum and see if Mr. Koessler has a recollection.

By Mr. BERNSTEIN:

Q. Mr. Koessler, will you refer to the August 16, 1954 memorandum, P-94, and also your letter to Mr. Nicht, P-95—

A. What paragraph?

Q. I ask you to look at Paragraph three of P-94.

A. I get these mixed up.

Q. That is the Nicht memorandum.

A. What paragraph?

Q. Three.

A. Paragraph three. I never told Nicht we were going to open up any plant in 1955 or 1956.

Q. Did you discuss opening the Lufkin plant with him?

A. This says here—

Mr. RAICHLE: Don't read it.

The COURT: Did you discuss it? The only thing that is important presently is to jog your memory, if it does, that some event did happen that you recall yourself.

The WITNESS: I don't recall discussing it. The only thing I remember about this meeting—they are talking about August 11, is this Toledo, Youngstown and Erie run.

By Mr. BERNSTEIN:

Q. Look at P-95, your letter to Mr. Nicht. You say: "I have not even discussed the Texas plant with NEA."

A. It means I didn't talk to him about that or with NEA about it.

Q. You are writing Nicht, you say, "I haven't—"

A. He apparently wrote a letter to me, asked me, "Have you talked that over with NEA?" I told him no.

Q. What were you talking about, have you talked what over with NEA?

A. I don't know what question he asked me. He apparently asked me if I had discussed my plans in Lufkin, the Texas plant with NEA, and I told him, "No, we haven't discussed the plans with NEA of our Texas plant."

2167 Q. You say: "It is our plan to develop the new accounts along the lines discussed with you—"?

A. Yes.

Q. What lines did you discuss with King on or about August 27, 1954, as to new accounts?

A. It could have been we would like to get some of his business.

Q. Do you have a recollection of what it was?

A. Not specifically, no. We were looking for business to put in that plant, he had some.

Q. What plant?

A. In the Lufkin plant, the Texas plant.

Q. You were discussing putting in business in the Lufkin plant with Nicht?

A. That's what it could have been. That's what this letter refers to. Sure we did.

The COURT: Mr. Koessler, these are some notes of this fellow, Nicht's, that are being read to see if it refreshes your recollection. On or about the time that he mentioned these things did he know about the plans for Lufkin from you?

The WITNESS: He didn't get them originally from me. He got them through the grapevine, that we were starting
2168 something. I didn't want him to know.

The COURT: In other words, I take it you are saying that you became aware of the fact that, while you hoped it was secret, it was indeed not, at least with Nicht?

The WITNESS: Exactly. Mr. Bernstein is trying to point out that—trying to say I discussed this matter with Nicht on what date the——

Mr. BERNSTEIN: August 11, 1954.

The WITNESS: —that my recollection can be bad. It isn't necessarily so. I couldn't discuss it with him at that time. I could have discussed it with him prior to that time.

The COURT: If he had challenged you with the fact he knew about it?

The WITNESS: Exactly.

The COURT: Had you taken title to land down in Texas for the plant?

The WITNESS: We had talked seriously about it. We hadn't taken title to it.

The COURT: Was somebody negotiating for you?

2169 The WITNESS: No, we were doing it ourselves.

By Mr. BERNSTEIN:

Q. You had signed a commitment for paper in June of 1964?

A. That is right, the Southland Paper Company.

The COURT: I suppose that is one of the possible sources of the news in the business?

The WITNESS: Yes, you can't keep these things secret.

The COURT: A big order for newsprint like that I suppose gets around in the business?

The WITNESS: Indeed.

The COURT: You say to me that you did not discuss it directly at that time?

The WITNESS: In the beginning.

The COURT: Yes, with Nicht?

The WITNESS: That is right. They had their own plans to build a plant down there. That is referred to in many of these memorandums. We wanted to get in ahead of them if we could. In one of the memorandums they make some statement that they beat us to the post.

Mr. BERNSTEIN: Will you mark document 170 for 2170 identification, dated October 7, 1958?

(Thereupon document referred to was marked Plaintiff's Exhibit P-96 for identification.)

By Mr. BERNSTEIN:

Q. Do you recognize P-96 for identification, Mr. Koessler?

A. Yes.

Q. What is it?

A. It's a payment we make on the Buffalo Evening News business.

Q. What?

A. A payment that we make on the Buffalo Evening News business.

Q. And what were the circumstances of that payment, and to whom do you make it?

A. King Features was trying to get that business and we were too. We got the business, we got the contract. King Features, when they lost the contract, told me, and they were going over to the Buffalo Evening News to Mr. Kirkover and remind him that the contract they had for the features, for the King Features, was not to print on Saturday, but to print on Sunday, and that he planned to print this comic section on Saturday, and they were going to get some more money from him or get it from us. It is another one of these shake-downs that Mr. Raichle talked about.

Q. How did he bill you fifty cents a thousand on that run? Did he call it mats or what form did it take?

A. It says King Features. I don't know. I haven't got the bill. I suppose so much a thousand.

Q. Bill Hammond is an employee of Greater Buffalo?

A. Right.

Q. This is a memorandum from Bill Hammond of your company to somebody else in your company stating that King Features will bill Greater Buffalo fifty cents a thousand on the Buffalo News, is that correct?

A. Yes.

Q. That is dated October 7, 1958?

A. That is right.

Q. With regard to P-72, this contract that was canceled in October, 1958, at or about the same time, the exact date of the cancellation letter of that written contract was——

Mr. RAICHLE: I thought it was October 27th.

By Mr. BERNSTEIN:

Q. I'll get the exact date later. Some time on or about October 7, 1958, that contract, P-72, was canceled, 2172 correct?

A. Yes.

Q. And——

Mr. RAICHLE: I object. Wait a minute, I object to the conclusion "canceled," it wasn't ratified by the Board. The letter speaks for itself. You like to say "cancelled," which implies it was at some time in force. It was not.

Mr. BERNSTEIN: That is a legal determination for the Court.

The COURT: Apparently the two leaders, so-called, Nicht and Koessler, contrary to what is customarily done in corporate work, signed a proposed contract and then it was put through the mill, as it had to be legally, and it was flattened out to nothing.

Mr. BERNSTEIN: The Government——

The COURT: Each side recognized they could not control the Board of their respective corporations, they both said therefore it is finished.

Mr. BERNSTEIN: There was a lapse of time between 2173 May of 1958 and October when that occurred.

The COURT: I know nothing about it. I think I said before that the principals got the thing rolling with signatures and then they both were not able to deliver or could not deliver the corporate authorization.

By Mr. BERNSTEIN:

Q. Now, on October 7, 1958, King Features sent you a bill for fifty cents a thousand on the Buffalo News, is that correct?

A. I assume so. Have you got the bill there?

Q. And P-72, the agreement that the Court was referring to, provides in paragraph one (b) that: "With respect to any new sale by Press to an account not listed in Schedule A" you would pay a commission of fifty cents per thousand, is that correct?

A. This was called off. Yes, we talked about this tentatively. We—I signed the thing contingent upon the approval of the attorneys and the other people.

Q. So this was a payment for a new account not listed on Schedule A?

A. No, it wasn't.

Q. You explained why the payment was made, but 2174 this newspaper wasn't listed on Schedule A?

A. No.

Q. All right, that is all.

A. I'll put it to you shortly, Mr. Bernstein. While King Features may have canceled the contract, they didn't cancel the shakedown.

Q. That continued?

A. It continues now, under the consent decree it continues and can continue.

The COURT: You mean because these people have the assignment of these licenses to use these cartoons, these comics, that those persons, represented by Brownell here, are still extracting sums from you?

The WITNESS: They haven't recently. This consent decree does not stop them from doing it.

The COURT: There isn't any known abuse that you know of?

The WITNESS: Since that time, no.

The COURT: I have in mind my discovery that after I limited your Sylacauga operation, at least to my satisfaction, I 2175 found somebody was taking what I thought was an unconscionable advantage of my own efforts to feel my way a little bit in this case. You don't represent to me they are doing it now?

The WITNESS: No, but they could. They could and it would be legal, as I understand it.

The COURT: I wanted to be aware of whether there was anything going on that I didn't know about.

The WITNESS: Could I explain?

The COURT: It isn't necessary. I understand what you mean. I wondered if you were actually kicking in at this time because of some action put through this Court. You mean it is a potential of that?

The WITNESS: That is right.

(Thereupon document previously referred to was marked Plaintiff's Exhibit P-97 for identification.)

By Mr. BERNSTEIN:

Q. Document number 98 is dated February 26, 1958. I ask you to note the fifth paragraph down, where the newspapers are identified, and ask you whether or not it was a fact that on or about February 26, 1958, King Features was billing Greater Buffalo Press each week for the following runs in the amounts there indicated?

A. I don't know. I have told you that is the Harte Hanks papers, we were paying fifty cents. You asked that before and I said yes. The whole group of papers are the Harte Hanks, I said yes. The Elmira Telegram, yes. The Shreveport Times, I said yes. I said yes on the Wichita Falls paper, which is actually the Harte Hanks group. I said yes on the New Orleans Times Picayune. The New Orleans States, no, because no such thing existed. On the Calgary Herald, no. On the Monroe paper, yes, because that is part of the Shreveport thing. On the Waterloo Courier, so-called, it wasn't—I think it was fifty dollars a week and that was to release some features. So the shakedown adds up to their total of \$563 a week, plus some more items, including the Buffalo Evening News.

Mr. BERNSTEIN: I offer P-97 in evidence on the same basis as the other documents.

Mr. RAICHLB: Same objection.

Mr. STEVENS: Objection.

The COURT: Same ruling. Let me see that last offer, will you? Who is R.K.R.?

Mr. BERNSTEIN: Mr. Rogers of King Features, Mr. Nicht's successor.

The COURT: Is he alive?

Mr. BERNSTEIN: Yes.

The COURT: I am trying to recall. We had Mr. Rogers here, haven't we?

Mr. BERNSTEIN: No, your Honor.

By Mr. BERNSTEIN:

Q. I show you D-6B in evidence, which are the Answers to the Interrogatories of the Defendant Hearst Corporation. You testified to this on direct examination that these were the newspaper contracts that Greater Buffalo took away from King Features, is that correct?

A. These interrogatories are something that the Justice Department got themselves. The information came from King Features on your solicitation.

Q. Right. You were asked questions about that?

A. I hope it's right. You've got it, they gave it to you, and I can't contradict it.

Q. In the Answer to the Interrogatories Hearst said these were the newspapers which had contracts with King Features which were canceled, and by reason of the newspapers
2178 entering into Greater Buffalo Press. You have no reason to doubt it, is that correct?

A. No.

Q. Now, Mr. Raichle asked you about that to show that you were taking business away from King. I ask you to identify which of those contracts you paid some commission to King Features on?

A. Well, we start off again with the Harte Hanks group, the first five papers.

Q. The first five papers listed in the Answers to the Interrogatories on D-6B?

A. Yes, We don't pay anything to the Dallas Times Herald. The Erie, Pa. Times I'm not familiar with, I can't recall. Lake Charles, we don't. Monroe and Shreveport, I said we did. Wichita Falls I said we did. Austin, Texas, we don't. Port Arthur, we don't. Waco, we don't. Birmingham, we don't. Houston, we don't. Miami Herald, no.

Q. The papers that you don't, you took away on November 6, 1960 and '63, '62, '64, is that correct?

A. Took them away in 1960—well, wait, it starts back in 1959, took these.

Q. Which papers? Let's take the earliest?

A. The earliest ones are 1955, some of them are '56.

Q. When you say "the earliest ones" you are talking
2179 about the contracts listed on Interrogatory Number 1, as early as 1955?

A. It says cancellation date.

Q. I am trying to ascertain—you have identified those papers for which you do not pay any commission to King—would you tell us the cancellation date of the newspapers that you do not pay a commission to King?

A. That we do not?

Q. That you do not.

A. The Dallas Times Herald, 1959. Lake Charles, 1957. Austin, Texas, 1960. Port Arthur is 1960. Waco is 1960. Birmingham is 1963. Houston is 1963. Miami is 1964. We have more—

Q. Those are other answers, that is another question. I show you Plaintiff's Exhibit P-28 in evidence. P-28 is the October 20, 1955 contract between the Greater Buffalo Press and NEA, entered into at or about the time that Greater Buffalo bought the Buffalo Color Press, is that correct?

A. Right.

Q. I invite your attention to paragraph three on page three—

A. Yes.

Q. And that provides for printing to be done for NEA at either Buffalo, New York or Dunkirk, New York or at 2180 the plants now being constructed at Lufkin, Texas and Sylacauga, Alabama?

A. Right.

Q. Were they actually under construction at that time or did you mean in the process of being?

A. In the process; we were dreaming about it.

Q. This contemplated that you would print for NEA at those plants?

A. Yes.

Q. Did you have any discussion with—strike it out. The contract between King and International, P-23 in evidence provides that International would be the exclusive printer for King, is that correct?

A. I don't know. Does it say that in here?

Q. I invite your attention to page two, paragraph fourth. It says: "While International is printing at least the minimum percentage of syndicate's supplement printing requirements as outlined in paragraph 2d above, International agrees that it will not produce or print comic supplements for any organization other than the syndicate, and in no event without the written consent of the syndicate."

A. Joe Gorman made this contract, I had nothing to do with it, and it apparently says here that if King gives him 2181 seventy-five percent of their business, they will be

King's exclusive printer. But I didn't make this contract or didn't sign it or have any discussion about it.

Q. I show you P-90 for identification, which purports to be Mr. Nicht's memorandum of July 26, 1957, of a conversation with you. I invite your attention to the eighth paragraph down.

A. Do I remember talking this over with Nicht? No.

Q. Do you remember Nicht's saying to you that he did not want to change the International Color Printing contract because in the International Color Printing contract there is a clause which International would have to obtain Nicht's consent before any other business is placed in the Sylacauga plant?

A. I don't remember talking about this at this time. I do recall Mr. Nicht in his conversations somewhere along the line with Graustein, Nicht was insistent that we could not—that the Sylacauga operation—in the Sylacauga operation we were not going to be able to print for NEA, they had to be out. We could not print for his arch enemy NEA.

Q. What was your discussion with Mr. Nicht?

A. I told him no; we were going to print for NEA and print for anybody else.

Q. Did you tell Mr. Nicht that you had a contract to 2182 print for NEA then?

A. Mr. Nicht knew we had a contract to print for NEA.

Q. In Sylacauga?

A. Certainly, he knew we had a contract to print for NEA.

Q. He didn't know whether the contract obligated you to print in Sylacauga?

A. I don't know what he knew. I think he knew that.

Q. You never showed him the contract?

A. No, nor never discussed it with him.

Q. What were the considerations for organizing Dixie Color with respect to the operation of the Sylacauga plant?

A. What?

Q. What were the considerations that you gave to using Dixie Color for the operation of the Sylacauga plant rather than some other corporation or rather than International?

A. I don't understand what you said.

The COURT: Why did you select the name?

The WITNESS: That was my name.

By Mr. BERNSTEIN:

Q. Dixie Color?

A. Yes, sort of goes with the territory down there.

2183 Mr. RAICHLE: You call that localizing one's self.

The COURT: Yes, I know. It is sometimes helpful, particularly if you are from the north.

The WITNESS: That is right. I found out they don't even observe Decoration Day as a legal holiday down there.

The COURT: We don't observe Lincoln's Birthday in the Federal Courts, the Federal Courts are in Alabama, too. We will take a short recess.

(Thereupon the court was in recess at 3:15 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 3:45 p.m.)

By Mr. BERNSTEIN:

Q. Mr. Koessler, with respect to the International Plant at Wilkes Barre, have you been going there often?

A. No.

Q. Give the Court an idea of how often during a year?

A. I have been there twice since we bought it. That is how many years?

2184 Q. Since 1955, twelve years. Twice in twelve years?

A. Twice in twelve years.

Q. Had you looked at the plant before you bought it?

A. No.

Q. And how about Buffalo—how about the Buffalo Color Press plant when you bought that, did you look at it?

A. We were familiar with that, it was in Buffalo.

Q. You had seen it?

A. Yes.

Q. And did you use any of the equipment that was in the Buffalo Color Press?

A. A couple pieces.

Q. Some were sold to New Mexico?

A. We sold—not to New Mexico—to Mexico.

Q. What did you do with the rest of it?

A. Junked it.

Q. Was most of it junked?

A. Most of it.

Q. Shifting back to the International Plant at Wilkes Barre, I understood you to say that you were anxious to get Hearst's

business and King was promising you that he would attempt to get Hearst's business, is that correct, before the sale?

The COURT: Nicht, you mean?

Mr. BERNSTEIN: Excuse me.

2185 The WITNESS: Nicht held that out as one of the offerings, potential offerings.

By Mr. BERNSTEIN:

Q. When did you begin to put this commercial work in International?

A. Well, we put—after we took it over.

Q. In 1955?

A. I think so, yes. '55, '56, '57, all the way along the line.

Q. Had you had plans for doing that before you bought International?

A. Yes.

Q. Could you run that plant commercial, without any color comic supplements?

A. I think so.

Q. And you said something about a percentage—

A. Wait, let's reconsider that. We could run International with the commercial business and with the business we put down there. Sixty percent of the business International does now comes from Greater Buffalo Press, not from King Features, that includes commercial and comic business.

Q. Let's take 1955, before Sylacauga was opened, what percentage of the business came from King Features at 2186 International?

A. You have to talk to Joe Gorman about it, he is the one that has the figures.

Q. Were you aware then in 1955 and 1956 how much of King's business was in the International Plant?

A. I was not aware in total, but I knew generally what newspapers they had, what newspapers we had, I never added it up to find out what it amounted to.

Q. Now, the Buffalo Color Press equipment—that contract, P-27, was signed October 20, 1955, and just to summarize it, is this a correct summary of what had occurred before that; you had discussions with somebody from Buffalo Color Press with regard to buying that business for some time before that, is that correct, some time before October 20, 1955?

A. Sure.

Q. With whom did you have the discussions?

A. Leon Herman.

Q. How about Herbert W. Walker, did you discuss it with him?

A. Possibly so.

Q. How about Mr. Earl Anderson, did you discuss it with him?

A. I don't recall that we discussed it with Anderson. He was not in command then, Walker and Herman were.

2187 Q. Can you give us some idea of how long a period of time the discussions had gone on?

A. Oh, they were not serious discussions; conversations like this, "We don't understand why you want to run that place down there."

Q. General preliminary talks would you describe them as?

A. I suppose.

Q. How long—

A. Social, most of them social, social occasions.

Q. Most of these were with Mr. Herman?

A. Most of them were with Mr. Herman.

Q. These were when you would meet Mr. Herman in connection with business you were doing for Buffalo Color Press at your plant?

A. That is right, and helping him out.

Q. You had joint labor negotiations with him?

A. Yes.

Q. Would you discuss it with him on the occasions that you were together then?

A. We would mostly discuss it when the plant broke down, we had to go over and fix it up.

Q. And when would you say the talks became more serious, more formal, what you would call negotiations that would lead to price and terms and conditions?

A. I don't recall that. There came a time when Leon
2188 Herman recommended to the people up in Cleveland, Mr. Walker, they ought to sell the plant. I mean it got to the point they were not making money on it, the machinery was in bad shape, it was getting to be an expensive thing. Mr. Herman made this recommendation.

Q. As far as your recollection, you have no event that you can pinpoint in your conversation with Mr. Herman when they changed from the social conversation stage that was something more serious?

A. No, except Mr. Herman had a heart condition, he was being more troubled with it, and I think that was largely in his mind, that he would not be able to carry it on any longer.

Q. Would you please refer to P-27, the contract between Greater Buffalo Press, Inc., and Buffalo Color Press, Inc. Those names are a little confusing, almost identical, your company is The Greater Buffalo Press, Inc., and NEA's company is Buffalo Color Press, Inc.

A. Yes.

Q. Now, in paragraph three, page two——

A. Yes.

Q. Buffalo Color Press agrees to turn over to you all Buffalo Color Press' supplement printing; for NEA Service of Cleveland, Ohio, a named customer which also places orders 2189 for the named customers shown in Appendix B, that is the newspapers, is that correct?

A. Let's look.

Q. Yes, these are all newspapers. What I want to understand is that thereafter did NEA Service continue to have the contracts with the newspapers on Appendix B or were those contracts with Greater Buffalo Press?

A. They held the contracts. They merely contracted to us to do the printing, they held the contracts with the newspapers.

Q. How about——

A. Still do.

Q. How about United Features Syndicate, did Greater Buffalo Press have the contract or did NEA have the contract?

A. NEA didn't have the contract, as I remember. I think we do business directly with United Features. I'm not sure about that. Anyway, United Features held the contracts, and still do.

Q. United Features Syndicate held the contracts with other newspapers?

A. Yes. There was no contract, it is just you print the jobs, there is no contract that I know of.

Q. Is United Features Syndicate affiliated with NEA?

A. It is affiliated with the Scripps Howard organization.

Q. And the United Press Association in New York——

2190 A. Yes.

Q. Does Greater Buffalo have the contract with them?

A. We haven't a contract with United Features, as I remember. We merely get an order to print this each week and we do.

Q. Would it be a fair summary to say that what was contemplated by paragraph three is that the newspapers that NEA then had contracts with to sell the printed supplements were to be printed by Greater Buffalo Press and also the other Scripps Howard newspapers that are named in paragraph three were also to be printed by Greater Buffalo Press?

Mr. STEVENS: I object, the contract speaks for itself.

The COURT: Overruled.

By Mr. BERNSTEIN:

Q. Is that a fair summary of your understanding of it?

A. As a subcontractor. They held the contracts and sublet them to us to print.

Q. You did not deal with the particular newspapers involved for whom you printed the supplements?

A. Well, I don't think so. So many of them aren't there any more; the Columbus Citizen isn't there, the Indianapolis Times isn't there.

Q. I invite your attention to paragraph five on page four, we referred to that earlier, and that is where provision is made for the printing to be done either at the Buffalo plant or the Dunkirk plant or the Lufkin plant or the Sylacauga plant. What discussion had you had with Mr. Herman about that?

A. Well, I think we all understood if it could be printed to advantage in Lufkin or Sylacauga, when and if they were ready, we would print them there.

Q. Do you recall how long before you entered into this contract you had discussed printing NEA's business at Sylacauga and Lufkin with anybody on behalf of NEA?

A. Prior to this contract?

Q. That is correct.

A. Sure, they came down and wanted to know would we print these things, we gave them the prices, they made up the contract on that basis.

Q. I am talking about when you had conversations with NEA about Sylacauga and Lufkin?

A. When we talked to Mr. Walker and the people from NEA about printing the comics we likely talked about printing them—giving them the opportunity to print in Sylacauga, giving them the opportunity to print in Lufkin.

Q. Now, inviting your attention to page five, paragraph six (a) and (b), you undertake to pay to Buffalo Color Press six and one-quarter cents multiplied by the number of

pages in the supplement for each thousand copies of any standard page supplement, and then paragraph (b) three and one-quarter cents for tabloid page size. How is that handled mechanically? How do you make those payments?

A. How do we make them?

Q. Yes.

A. We send them a bill for them, they pay the invoice.

Q. Buffalo Color Press was liquidated, do you receive the invoice from NEA?

A. I think so, I am quite sure. I am not too familiar with that.

Q. You are not familiar with the mechanics?

A. No.

Q. Paragraph seven refers to newsprint. Who supplies the—what is the arrangement with respect to newsprint?

A. We supply the newsprint.

Q. When you say that you supply the newsprint, does that mean that you purchase newsprint and then charge
2193 NEA for the printed supplement which includes the newsprint, the ink, the labor, all these other factors in it?

A. Yes, that is all part of the price, if it is mentioned.

Q. So that is it fair to say, is it accurate to say that you sell NEA, the printed supplement, the only part that you don't supply is the features, that has to be gotten from the newspapers or the syndicate?

A. We don't supply the features.

Q. Everything else is supplied?

A. We don't supply the salesmanship, if that is an element in the matter, it is their business, we are subcontractors for them.

Q. Well, the article or the physical thing you create is the printed supplement, the comics?

A. Right.

Q. In order to have that printed supplement you have to have raw material, you have to have newsprint, you supply that?

A. Yes.

Q. You have to put labor on it, you supply that—

A. Yes.

Q. —and ink, and you have to get it to NEA's customers is that correct?

A. Yes.

Q. You do that, you take care of that?

2194 A. No, we don't supply the transportation.

Q. You arrange for the transportation?

A. Yes.

Q. And then you invoice NEA for the finished product, is that correct?

A. That is correct.

Q. And is it a fact that if NEA wants to quote a price to a newspaper that has been printing its own, that it is obligated to confer with Greater Buffalo Press before it quotes a price to that newspaper—

A. No.

Q. —in order to ascertain some element of the price, because of local conditions, transportation, makeready, or some other—

A. No. Wait—

Q. My question is this; does each newspaper have some feature that is really unique, insofar as printing that particular newspaper, either transportation or make-ready, or the arrangement of the comics, or some other thing, so that even though NEA has a contract with you which lists in general terms what the rate will be per thousand and it provides for an increase and decrease, nonetheless, as a customary practice, has to confer with somebody from Greater Buffalo Press as to what the 2195 charge will be for that particular newspaper?

A. No.

Q. Why is that?

A. Because they have a contract. They are familiar enough to know the terms of the contract, pay so much a thousand, any other elements that are involved in there, make-ready items, that is spelled out. They are familiar enough to make up their own price.

Q. And is that true insofar as transportation is concerned?

A. Yes.

Q. Transportation rates, everything else?

A. These are available to everybody.

Q. And do you, on occasion, use private truckers that don't have published rates?

A. Yes, I think so.

Q. On occasions have syndicates asked you particular prices for particular newspapers because of that feature, the transportation feature?

A. That could be or they can go to the trucker themselves and ask it. They are familiar with the truckers.

Q. Did you regard Buffalo Color Press as a captive plant of NEA?

The COURT: Captive?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: I don't know what it means.

2196

By Mr. BERNSTEIN:

Q. Did you regard International a captive plant of King?

A. What do you mean?

Q. I thought you testified to that in answer to Mr. Raichle's questions on direct, did you?

A. I don't recall that he asked questions like that. What do you mean by it?

Q. Well, you regarded International as printing entirely for King, isn't that correct?

A. Yes.

Q. Did you regard Buffalo Color Press as printing entirely for the Scripps Howard-NEA group?

A. They didn't print entirely for Scripps Howard and NEA group. They printed for some individual people like the Chicago Daily News, printed their comics. They did that independent of NEA.

Q. Did you regard them as color printing competitors with respect to those accounts?

A. Well, a competitor in the sense they were not very strong competitors, they were in business, we were in business and—

Q. To that extent, you were in the same business?

A. We were in the same business.

Q. Did you regard NEA as a competitor in the sale of features?

2197 Mr. STEVENS: Objection.

Mr. BERNSTEIN: Excuse me, strike the question.

By Mr. BERNSTEIN:

Q. Did you regard NEA as a competitor for the sale of color comic supplements, printed supplements?

A. Yes.

Mr. BERNSTEIN: Please mark for identification document number 124, a letter dated August 25, 1955, from Mr. Koessler to Mr. Nicht?

(Thereupon letter referred to was marked Plaintiff's Exhibit P-98 for identification.)

By Mr. BERNSTEIN:

Q. I show you Plaintiff's Exhibit P-25 in evidence, P-26

in evidence, and P-98 marked for identification, and I invite your attention to P-25 in evidence, a letter to you from Mr. Nicht, dated August 17, 1955, and in the first four paragraphs he talks about some negotiations and contracts, and then he says, "Now we understand that Fargo, North Dakota, Forum has given NEA cancellation notice and the contract will expire in about a year's time. I believe you print a ten-page standard size section for them." Were you printing a ten-page standard size section for NEA for Fargo, North Dakota Forum?

A. I guess so.

Q. Mr. Nicht says to you: "Situations such as this brings up again the matter of what to do about NEA. I think you and I are beginning to see eye to eye in this respect, but NEA is competition, and bad competition because they will use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process." Then he says: "Take Fargo, for instance. Why shouldn't we make them a proposition based on your printing?" P-26, you write to Mr. Nicht, and I notice that isn't your signature, it is your name on the bottom, is that signed for you?

A. Wait until I read the rest of this.

Q. Look at August 22, 1955, P-26, a letter from you to Mr. Nicht. In the first paragraph you say: "Dear Frank: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere with his present operation. I gather he is having trouble at St. Louis too, St. Louis realizing that there is no percentage in printing at the prices they are now charging NEA." St. Louis you are referring to world Color?

A. Exactly.

Q. In the next paragraph you say: "I think something will come of this in the next few weeks and abeyance—" I assume that is a typographical error, you mean annoyance?

A. I think you are probably right.

Mr. RAICHLE: What was your answer?

The WITNESS: I think you are right, I think it was meant to be annoyance.

By Mr. BERNSTEIN:

Q. "—from that source will be removed." Now, is the August 22nd letter a response to Mr. Nicht's August 17th letter?

A. I couldn't say. I don't think so.

Q. Do you recall your conversation with Mr. Nicht concerning NEA competition?

A. Yes. He wanted to put NEA out of business.

Q. And did you discuss that at all—strike it out. Look at P-98, your letter to Mr. Nicht, dated August 25th, and you say: "Dear Frank: It appears to me that the best way of handling the NEA problem is to let NEA hold what they have with an opportunity to get a decent price for it and thus realize some income. From the conversation of last week I think this can be worked out." What conversation were you talking about?

A. Probably one of the ones where he wanted to put NEA out of business.

Q. You say, "I think this can be worked out."?

A. I told him I didn't think they should try to put them out of business. Do you want me to tell you some more about that?

Q. Okay. Tell me about the first paragraph, "To let NEA hold what they have with an opportunity to get a decent price for it and thus realize some income."?

A. Nicht told me—there is some memorandum on record here—

Q. Excuse me, we would like to have your present recollection of your conversations with Mr. Nicht concerning NEA?

A. That is what I am giving you.

Q. Right.

A. Nicht told me that there was in the wind a merger coming up between United Press and International News Service.

United Press was the news service that belonged to 2201 Scripps Howard. International News Service was a news service that belonged to the Hearst organization. He said if the merger came about that it was likely that United Press would wind up on top and the Hearst organization would be at the bottom. He said he didn't want to see that happen to King features and the best way for him to forestall that would be to run—to weaken NEA to the point where if the merger came about King Features would be the top dog in the merger.

Q. Did he ask you to do anything about that, to help him?

A. Yes, it says so here, not to print for NEA, not to do anything; to try to help him put NEA out of business. That is all through these letters. You are familiar with them, Mr. Bernstein.

Q. At the same time did you have any conversations with—
strike it out. Am I correct that in response to Mr. Raichle's
questions on direct examination you said that Mr. Walker had
been complaining about King in certain ways, about business,
am I correct in that?

A. Yes, Nicht was knocking their brains out, I think was one
of his expressions.

Q. Knocking their brains out in what way?

A. Taking business away from him, supplanting them
2202 in the features printing field, doing everything possible
to hurt NEA, weaken them, force them into a merger
that he contemplated.

Q. At that time you were in discussions for the printing of
NEA and after the Buffalo Color Press Plant?

A. Discussions with whom?

Q. NEA, concerning doing the printing for NEA?

A. We were printing for NEA, had been for years.

Q. Were you also in discussion with them about buying Buf-
falo Color?

A. We were thinking about it, we talked socially with Leon
Herman about it.

Q. At that time did Mr. Anderson or Mr. Walker, or anyone
else on behalf of NEA, ask you to talk to Nicht about it?

A. Yes.

Q. What was that?

A. Well, the last thing Nicht did was—not the last thing—
I mean he used to send out bulletins to his sales staff, and the
bulletins carried the title "Oust NEA."

Q. Did you see those?

A. Yes.

Q. How did you see them?

A. Because they were in the papers that we got from
2203 King Features after your grand jury investigation.

Q. At the time of your conversations with NEA you
didn't know about those?

A. I have seen them since.

Q. Go ahead.

A. He was hurting NEA. He was hurting them through the
combination—through the process of selling the features and
the printing together.

Q. What did—who on behalf of NEA asked you to do
something?

A. I think it was Walker.

Q. What did he ask you to do?

A. Well, we talked about it and I told him I don't think that is fair, and as I understood it—at least I was somewhat familiar about a law suit that went on in town here that involved the Shea Theaters—I didn't get any legal counsel on this, it was something that I remembered, that the Shea Theaters in Buffalo were partially owned by moving picture producers. I think Shea's Theaters were owned partly by Paramount, partly by Loew's or Metro Goldwyn Mayer, I don't know which, and the Shea Theaters got the good pictures. I know something about that because I was a press agent for one of the theaters that got the lousy ones. A holler went up from the other motion picture producers that Shea's generally
2204 around the country—that shouldn't be permitted, that a producer of the moving pictures shouldn't own the public outlets and shows, you couldn't combine the two together, that was an unfair practice, and I think they were sustained in court by it. I thought this arrangement that King was working added up to the same thing. I told Walker so. I said, "You ought to go to Nicht and tell him about it."

Q. Did you talk to Nicht about it?

A. No, I didn't, I told Walker that I would introduce him to Nicht, they could talk about it.

Q. Do you recall having any conversations yourself with Mr. Nicht, before you introduced Mr. Walker to him, concerning NEA's conversations or complaints?

A. That I don't recall, why Walker wanted to see him. He wanted to see him, I may have told him why I thought he wanted to see him, I don't remember, I don't recall.

Q. As you testified yesterday, you did introduce Mr. Walker to Mr. Nicht at Mr. Walker's suite in the Beverly Hotel in New York?

A. Correct.

Q. Do you recall—think back—how that came about, how did you find yourself at the Beverly Hotel in Mr. Walker's
2205 suite? Did you—

A. I was not at the Beverly. I called Nicht from Buffalo or somewhere and asked him to—if he would meet Walker at a certain time and certain place. I think that is the way it was arranged.

Q. Your best recollection is you told—

A. Mr. Walker told me where he was going to be, could he make an engagement with Nicht to see him at that place.

Q. To the best of your recollection, you did not indicate the subject or anything else?

A. No.

Q. And what did you believe they were going there to discuss?

A. I thought they were—Walker was—I thought Walker was going to discuss the beefs he had about King tying up the features and the printing and hurting him.

Q. Taking business away from him?

A. Taking business away from him, yes.

Q. Now, I show you your letter to Mr. Nicht, P-40, dated January 26, 1956, and you say to Mr. Nicht: "Dear Frank: I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives." In the last paragraph of that letter you say: "It can be worked out, however, under the idea on which we are cooperating, namely, each of us to hold what we have and to share with King any new business which is obtainable." Would you please read that letter to yourself?

A. Yes. I have read it.

Q. And to what did you refer in the first paragraph when you said, "I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives"?

A. The Memphis Commercial Appeal was owned by the Scripps Howard organization. If anybody was going to get their printing, NEA was going to get it or have some say as to who got it. King wouldn't even recognize the family relation, he wanted to have it.

Q. He told you that?

A. Yes.

Q. What did he expect you to do?

A. He expected if I got it to pay him a commission, which we didn't.

Q. What did he expect you to do about him denying NEA the privilege of doing business with them?

A. Certainly we were not going to deny them the privilege of doing business.

Q. You did not intend to compete for that business?

2207 A. NEA couldn't compete, they didn't have the facilities to compete.

Q. You say NEA?

A. NEA, yes.

Q. Couldn't compete for the commercial appeal?

A. No.

Q. Why not?

A. Because they didn't have a press that could print ten pages. This was a ten-page job.

Q. January 26, 1956?

A. That is right.

Q. Then they were having the printing done at Buffalo Color Press at Wilkes-Barre?

A. No.

Mr. RAICHLE: You are getting tired.

By Mr. BERNSTEIN:

Q. January 26, 1956, NEA was having The Greater Buffalo Press, your company——

A. Yes.

Q. Do the printing for it?

A. Yes.

Q. Your company was equipped to print the Memphis Commercial Appeal?

A. That is right.

2208 Q. NEA could then compete for the Memphis Commercial Appeal and have the printing done at your company plant?

A. They could have done it in one——

Mr. STEVENS: Objection. You don't mean compete with the Memphis Commercial Appeal.

By Mr. BERNSTEIN:

Q. I will withdraw the question and say, NEA could compete with King to get the Memphis Commercial Appeal's business and have it printed at your company's plants?

A. They did compete with King through us.

Q. What do you mean through you?

A. They could have done it one of two ways; got the business themselves and subcontracted it to us, or they could have said to us, "You get the business, you pay us a commission," which we do.

Q. You were telling Mr. Nicht in the first paragraph of this letter that as for you, Mr. Koessler, was concerned, it didn't make sense that you would go down to seek the business of the Memphis Commercial Appeal as the Greater Buffalo Press, Inc., since it was NEA's account and NEA's business?

A. I didn't say that. I said to Nicht, "You are a little off your rocker if you think you can get that job." That is what I said to him.

Q. That is right. You intended either the contract would be with the Greater Buffalo Press, Inc., and you would give NEA commission——

A. We hoped so.

Q. Or the contract would be with NEA?

A. Yes.

Q. And you would do the printing?

A. Exactly. That is what we were hoping. I said, "If however, we get in the picture as printers——"

You say: "If however, we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it."?

A. That is what you always had to tell Nicht, he would never take no.

Q. Then you gave him an alternative, "The alternative would be for NEA to take the job to St. Louis——" —World Color—— "——which is too close for comfort."

A. I didn't give him an alternative, I said that was what the alternative would be. We couldn't try to dispose of NEA in this picture, NEA was sales agent, if anybody was going to get the job it was NEA.

Q. You were saying to King, "Wise up, get smart, accept this commission if we get in there, you are not going to be able to get the business"?

2210 A. Exactly, except we didn't pay the commission.

Q. Did you get the business?

A. Yes.

Q. You led him to believe in this letter that if you got into the picture you would see he is cut in?

A. Oh, led him to believe—you always had to tell him maybe.

Q. You didn't mean it at the time?

A. No.

Q. Then——

A. Any more than he meant he was going to get us the Hearst business.

Q. Is this correct, Mr. Koessler, from 1955 to 1958, going through all the discussions and negotiations in that contract you talked to the lawyers about and the lawyers said it wasn't

right, all this time you didn't believe him and he didn't believe you?

A. Exactly.

Q. Now, the last paragraph——

A. As a matter of fact, I don't think Mr. Nicht believed anybody.

Q. How about you?

A. He didn't believe me for sure.

Q. How about you?

A. Did I believe him? No.

2211 Q. You did believe other people?

A. Certain people.

Q. You believed Mr. Anderson?

A. Mr. Anderson——

Mr. RAICHLE: I think this is carrying it a little too far, who believed who.

The COURT: It doesn't mean anything to me.

Mr. BERNSTEIN: Mr. Anderson of NEA, Earl Anderson of NEA. I will withdraw the question.

The COURT: Well, you can consider that. We will start either with that question or another in the morning at ten o'clock.

I have other things, I don't want to crowd you again, I would like to start earlier but I can't control some of the exparte stuff that rolls in in the morning. I am advised that the Koessler family has a party of importance to them, some type of an anniversary.

The WITNESS: Tomorrow.

The COURT: Yes. You can count on that. If you can get out at four-thirty——

The WITNESS: Fine.

2212 The COURT: Four-thirty we will quit for your purposes. I will see you at ten o'clock in the morning.

(Thereupon the court was in recess at 4:30 p.m.)

* * * * *

(Proceedings resumed, pursuant to recess, commencing at 10:00 a.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: Initially, if the Court please, I would like to offer in evidence a few documents that were discussed yesterday and were either offered and not marked in evidence or were not offered in evidence. The first is a document numbered 97,

dated June 19, 1957, which the defendant Greater Buffalo requested be offered in evidence along with other documents they asked the plaintiff to offer in evidence.

The COURT: Those you wish to have, those are further letters?

Mr. RAICHLE: In connections with his negotiations.

The COURT: Received.

(Thereupon plaintiff's exhibit P-97, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next is P-72, that was the signed agreement between Greater Buffalo Press and King Features, and I believe it was received in evidence yesterday but it wasn't marked. In any event, I offer it in evidence now.

The COURT: All right, received.

(Thereupon plaintiff's exhibit P-72, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next document is P-92 for identification, that is a letter from Mr. Koessler to Mr. Houston Harte of the Harte-Hanks Newspapers, dated June 17, 1954, about which Mr. Koessler testified yesterday.

The COURT: I am assuming there is no objection, received.

(Thereupon plaintiff's exhibit P-92, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The next is P-95 for identification, a letter dated August 27, 1954, from Mr. Koessler to Mr. Nicht, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-95, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-96 for identification is a memorandum from Mr. Hammond of the Buffalo Color Press, dated October 7, 1958, with reference to the Buffalo News, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-96, previously marked for identification, was received and marked in evidence.)

2216 Mr. BERNSTEIN: P-98 for identification is a letter dated August 25, 1955, from Mr. Koessler to Mr. Nicht, about which Mr. Koessler testified yesterday.

(Thereupon plaintiff's exhibit P-98, previously marked for identification, was received and marked in evidence.)

CROSS-EXAMINATION

By Mr. BERNSTEIN Continued:

Q. Now, Mr. Koessler, inviting your attention to that portion of your testimony in answer to Mr. Raichle's questions the day before yesterday, concerning the growth of Greater Buffalo Press from a small operation in a private house to the operation that it is today, and just to make the record clear, can you give us some general idea of the dollar volume of the printing of color comic supplement news printing that Greater Buffal Press, Inc. is doing, plant by plant?

A. Altogether I would say about eighteen million dollars.

Q. When you say "altogether", do you include Wilkes-Barre?

A. I don't think so.

Q. Do you include Lufkin?

A. Yes.

2217 Q. Do you include Sylacauga?

A. Yes.

Q. And do you have a general idea of the printing done at Wilkes-Barre?

A. Yes.

Q. Color comic supplement volume, what is that, please?

A. I don't know, you better ask Joe Gorman about that.

Q. Do you have a general idea of the net, the combined net worth of Greater Buffalo Press, International, the Lufkin plant and Sylacauga plant?

A. We have it on the books, but I could find out.

Q. I know that. I mean just to make this picture——

A. I don't know what it stands at, at the present time.

Q. I wanted to get some idea for discussion purposes. This initial investment that you had, what was it, a thousand dollars in 1926, and that investment is now worth approximately how much? Give us a figure, we won't hold you to it. Approximately how much?

A. I couldn't say.

Mr. RAICHLE: You mean per book?

The WITNESS: I couldn't tell you.

Mr. RAICHLE: We will furnish it to you.

Mr. BERNSTEIN: Fine.

The COURT: Do you have a big item of good will in
2218 there?

The WITNESS: None. The net worth is merely the investment minus the write-off.

The COURT: You will supply them with a balance sheet?

Mr. RAICHLE: Sure.

By Mr. BERNSTEIN:

Q. And I take it as your business started in approximately—
what year?

A. 1926.

Q. 1926, and it continually grew up through—I want to limit our discussion now to the period from 1926 through the purchase of International in 1955—your business continually grew during that period from 1926 to 1955, is that correct?

A. Yes, sir.

Q. And at that time the equipment that you had on hand increased, isn't that correct, the printing equipment?

A. Yes.

Q. Now, where did you get the equipment that you increased?

A. Well, when we—in some cases when we would take over the printing of a newspaper we would buy its color comic equipment. We did that in the case of Cleveland, we did that in the case of Detroit, we did that in the case of New Orleans.
2219 We bought other equipment on the market and rebuilt it.

Q. Did you buy any equipment from Hearst Newspapers?

A. In what year?

Q. Any time during the period from '26 to '55?

A. No.

Q. Didn't buy any?

A. No.

Q. Did you buy any equipment from any newspapers that you did not do the printing for the color comic supplements?

A. Yes, we bought some equipment from the Philadelphia Enquirer.

Q. Who did their color comic supplement printing after you bought the equipment?

A. They continued to do it themselves. They did it in the roto process, other than our process.

Q. And as your business was growing from 1926 to 1955, were you printing any King Features, not for King, not for

Hearst, but for the newspapers for whom you were printing, did they have King Features in them being printed?

A. Some of the feature material printing we did had King Feature material, yes.

Q. Did you have other features beside King's?

A. Yes.

2220 Q. Which did you have the most of?

A. I don't know. That would be hard to say, every newspaper is different.

Q. Those that you were printing, you were printing the larger runs, newspapers with the larger runs?

A. Yes.

Q. A very substantial number of King Features in those newspapers?

A. Some newspapers there wasn't any because King limited itself to selling one newspaper in an area. Detroit, for instance, Hearst had a paper in Detroit, and in the Detroit newspapers there wasn't any King material, none whatever.

Q. What material was in that newspaper?

A. They had Chicago Tribune, they had NEA, they had United Features, they had McNaught, all the syndicates exclusive of King.

Q. What papers were you printing for that had King Features?

A. In Detroit?

Q. No.

A. Any number of papers.

Q. A large number?

A. We printed three hundred and some, and I am sure that a large number had King Features material in them.

2221 Q. And how much of a shakedown were you paying for those features?

A. We weren't paying any. I'll explain why.

Q. Please do.

A. Well, in the case of a newspaper printing its own comics, it already had contracted with King for the features and they knew the price of the features, King knew they had the features, so the newspapers didn't have to pay them any more, they were printing their own comics, paying for their own features. They had the printing and features separated. So when we took over only the printing, we didn't have to be involved in the features.

Q. You were not concerned during that period of time that by taking business away from King, King would increase the price on some feature other than the comic features?

A. Were we concerned about it?

Q. Yes.

A. I don't think at that time. This goes back in the early thirties and forties. I don't think the subject came up.

Q. You were——

A. I don't know whether they did any work on these newspapers or not, but I don't know about it.

2222 Q. As far as you were concerned, your business was not being hindered by any shakedown by King during that period of time?

A. It was hindered by King's ability to tie up the features and the printing so that we couldn't get the jobs.

Q. I am talking about those papers that you were printing and had King Features in them, it wasn't hindered as to those?

A. No, but that was limited to quite a few cities. I mean, Boston, we print the Boston Globe, there is a Hearst newspaper in Boston, so no paper in Boston we printed had King Feature material at the time. You can go down the line.

Q. During that period of time, in your early growth from the thirties through the—let's take the ten-year period from the thirties to the forties—during that period of time you were growing, were you not, increasing your volume of business?

A. Yes.

Q. And during that period of time was King an active competitor of yours in the sale of comic supplements?

A. Yes.

Q. Were you taking business away from King?

A. Yes, to the extent we could.

2223 Q. To the extent you could. You were growing and being successful?

A. Yes, but most of our success, most of our growth, was on newspapers that printed their own comics.

Q. And they didn't need King Features?

A. A large number of them didn't have King Features material in them.

Q. Some of them did.

A. Some of them had some.

Q. You had no difficulty continuing to get King Features as to those newspapers?

A. We didn't get them, the newspapers had them. All we did——

Q. You didn't experience any difficulties in getting that newspaper's business for the King Features?

A. King in many cases didn't know we had the job. I mean, these people wouldn't do business with King for the reason they didn't have any King material, they couldn't get any of it, there was a Hearst newspaper in the city in which they operated. So——

Q. Which one of the papers that formerly did its own printing, that you then did the printing for, during the period from 1926 to 1940, had King Features, comic features.

A. Oh, seven of them. The Syracuse Herald was one 2224 of them.

Q. Was that a big run?

A. Fairly big, a couple hundred thousand.

Q. You had the paper—or put it this way; Greater Buffalo was able to continue printing supplements with King Features in them for that Syracuse paper?

A. Yes, but Mr. Nicht suggested a shakedown on that one, too.

Q. When was that?

A. In 1954.

Q. I am limiting the period to 1940, I am going in that early period of 1940. I want to take this step by step. Now, during that period in 1940 did you do any printing for and Hearst newspapers of comic supplements?

A. Hearst newspapers?

Q. Yes.

A. No.

Q. Did you do——

A. Newspapers owned by the Hearst organization?

Q. Yes.

A. No.

Q. Did you do any printing for King of color comic supplements?

A. In the forties, no.

Q. Take the period from 1940 to 1950, did you do any 2225 printing for Hearst newspapers during that period of time or King Features, either one?

A. I don't think so.

Q. Then, in your best recollection, when did it start that you began doing printing for King Features?

A. It started in 1954.

Q. With what papers?

A. With Youngstown, Toledo and Erie.

Q. Those were the first papers you started to print for?

A. Yes. King Features gave us the order on that.

Q. Had you been doing any business with Mr. Nicht prior to that time?

A. No.

Q. How did you start doing business with Mr. Nicht?

A. Well, he wanted to cause some trouble with his printer, Gorman, I guess. He wanted to get us to compete with—he wanted to get lower prices and go back to Gorman and break down his prices.

Q. He wanted you to compete with International?

A. No, he wanted us to give him prices so he could go back to Gorman and get lower prices from Gorman.

Q. Did he tell you that?

A. No. I don't know whether he did or not. I know what the purpose was.

Q. And did you give him prices?

2226 A. Yes, we did give him prices. Many times he asked for prices.

Q. Did you give him prices in order that he could go back to Gorman and get a lower price?

A. We gave him our own price.

Q. To get the business or to get him to get a lower price from Gorman?

A. We gave him prices, if he would accept them we would do his business.

Q. You wanted to lead him on to get his business?

A. No, he asked for prices, we gave them to him.

Q. You were serious about getting his business?

A. Yes. If he would accept the price, we would do his business.

Q. You believed at that time that he was seriously looking to give some business to you?

A. No, not until he gave it to us.

Q. But you did not completely think it was so unrealistic that you would not get it?

A. What did I think? I don't know.

Q. I am trying to find out—

A. When I gave him the prices was I assured he was going to give us the business? No.

Q. I know that. You did not give them the prices to mislead or fool him or put him on or lead him on, you gave him
 2227 the prices as any normal businessman would do, looking to get as much business as you can, with a serious effort to get the business, is that correct?

A. That is right.

Q. And did you know at that time whether or not Mr. Nicht was also seeking to put printing business at Eastern Color?

A. I have heard he was, yes.

Q. At the same time?

A. I think so.

Q. Did you regard yourself as a competitor for that printing business with Eastern Color?

A. I think so.

Q. You did not regard yourself as a competitor with International for that printing business?

A. No, because International didn't have any printing business to hand out, it was business that belonged to King. Only King could give it to us. It had to be King's decision.

Q. And only a syndicate could give its printing business to Eastern, except for newspapers?

A. What do you mean?

Q. King could give its business to Eastern?

A. If he wanted to.

2228 Q. You felt you were in competition with Eastern for King's business, did you?

A. No. What do you mean?

Q. Well, let's see if we can understand the situation. I understood you to testify that in 1954 Mr. Nicht discussed with you printing three runs, is that correct?

A. Right.

Q. Did he discuss printing more than that or just the three?

A. I think only—he may have, he was always talking about a lot of things.

Q. Was he also talking about all the Hearst business then?

A. Yes.

Q. Did he come in, and was this conversation at the start—

A. Well, this is how many years ago?

Q. 1954.

A. Yes. You expect me to remember what he said when he walked in the door?

Q. No, but I would be greatly appreciative if you would try and think back.

A. He come down for the purpose of getting prices on Toledo, Youngstown and Erie.

2229 Q. I would like you——

A. We talked about that.

Q. I would like you to think back to that occasion, see if you can recall the occasion, see if you can recall whether or not the nature of the discussions, the kind of relations that you had—after all, Mr. Nicht was your principal competitor at that time, was he not?

A. Yes.

Q. So when your principal competitor comes in, it is an unusual situation, isn't it?

A. Not for him, no.

Q. Was it for you?

A. We were trying to get the business.

Q. Right. Now, at that time was Mr. Nicht talking to you about his potential or opportunity of switching his business from International over to Greater Buffalo?

A. He said he could switch some of it, yes.

Q. Was he also talking about switching or getting additional Hearst business and putting it into Greater Buffalo?

A. Whether he talked about it that day, I don't know.

Q. But during that period he did, 1955 and 1954?

A. That was one of the promises he held out, the big
2230 volume of business that we may or may not get.

Q. You gave him prices, serious prices, with the hope—no assurance—with the hope that if you were able to swing it, you would get that business, is that correct?

A. We gave him the prices. If he would accept those prices we would do his printing, yes.

Q. You were serious about it?

A. Certainly we were serious about it.

Q. And when was the first time that Nicht shook you down for commission on this business?

A. I think the first one was the Harte-Hanks papers. There was an apparent attempt on the Syracuse Herald prior to that time.

Q. How about Waterloo, Iowa, was that the first or a later one?

A. That came later. It could have been earlier, I don't know. Waterloo was a matter of features, it wasn't printing price.

Q. The Harte-Hanks, what was that a matter of?

A. That is a group of newspapers down in the southwest.

Q. I know that. What was the discussion about that, the Harte-Hanks?

A. We took the business away from him, the printing business away from him.

2231 Q. This is while you were printing for Nicht some other business, is that correct? You were printing some of these runs for King Features, were you not?

A. Yes.

Q. It was while you were printing these runs for King that you took some other business away from him?

A. Yes.

Q. He came in and discussed your taking that business from him?

A. I don't think he came in—he didn't know we took it away, we didn't tell him. These people wanted—asked us to put a price in on it, and we did, we put our regular price on it, and they decided to give it to us. When Nicht heard about it he took quite a burn.

Q. What did he say?

A. He told me he was going to the Harte-Hanks people, and whatever money he was losing as a consequence of losing the printing business he was going to make up for it on the features, one way or another. He was going to get it from the Harte-Hanks people or from us.

Q. So you agreed to give him a commission not to stir up that trouble?

A. That is right.

2232 The COURT: Mr. Koessler as I understand it by this time you had perfected methods of printing wherein you were making a nice profit and out of that you felt compelled to pay some of this tribute?

The WITNESS: I would like to make it clear that this thing we paid King came out of us not out of the customer.

The COURT: In other words as I understand what you have said in the last few days is that as time went on you have no question that you had perfected methods where you could do it cheaper you were making a nice profit as you were entitled to and out of that you shared if you will with King in order to have these features not withdrawn?

The WITNESS: We were making a sufficient profit to do it. When they took that——

The COURT: You were able to do it?

The WITNESS: Able to do it.

The COURT: You had by that time learned to function so physically that you could afford, if you had to, to give
2233 some up?

The WITNESS: If we had to.

The COURT: One thing I am sure I have heard in this lawsuit; we talk about taking printing from Nicht and King; how did they accomplish the printing for a newspaper? They didn't have machinery of their own, a plant of their own?

The WITNESS: International Color Printing Company.

The COURT: All of it was done there?

The WITNESS: Yes, sir.

The COURT: No matter where it was in the country?

The WITNESS: Some of it was done—they had a printer, the Fort Worth Star-Telegram in Texas.

The COURT: When we are talking about Nicht doing the printing, selling the features; basically, we are talking about the production of Wilkes-Barre?

The WITNESS: Right.

2234 The COURT: All right.

By Mr. BERNSTEIN:

Q. And so we have this situation in 1954 when Nicht turned over to you the printing of the Toledo, the Erie and what other newspaper?

A. Youngstown.

Q. The Youngstown newspaper. And then you paid Nicht for the—then Nicht discussed with you on or about the same time the Binghamton and Utica situation, is that correct?

A. No, this was long before. He never discussed the Utica and Binghamton with me.

Q. He did not?

A. No, except that telephone message you got there.

Q. Aside from that he did not talk to you about it?

A. No.

Q. But on those three telephone conversations he did?

A. There was one telephone conversation you got the notes on there——

Q. Right.

A. —where he took——

Q. Wasn't that on or about the same time as the Toledo Erie—

A. It was later.

2235 Q. Now, Mr. Koessler—

The COURT: I wonder if I could interrupt again. I take it, Mr. Koessler, that let us say somewhere in the forties, by reason of your perfecting methods, as you have generally described, you felt you were doing better work than International Color at Wilkes-Barre was doing?

The WITNESS: And at lower cost.

The COURT: I go back some years when I used to look at the comics more than I do now, and there used to be a lot of overprinting and stuff, you would have a character in a comic strip and he would be half pink and half green, and so forth; is that what you are talking about, better work?

The WITNESS: Yes.

The COURT: I don't see that any more.

The WITNESS: That is the improvement or part of the improvement, yes.

The COURT: And was it your improvement?

The WITNESS: Yes.

The COURT: I was trying to get a little background, 2236 trying to get a view of what you had to sell by way of methods and costs that this International didn't.

The WITNESS: They did later, too.

The COURT: You see, in this lawsuit, simply put, there could be two explanations. One, I have used the expression you had, by effort, made a better mousetrap, you could turn out a good product at a cheaper cost. The other side of the lawsuit is the one that the Government is contending, that this was all gimmicks. I am equally interested in their side, and I am also interested in hearing, equally, some other explanation, which of course you have been giving. But somewhere in the past of the lawsuit and since you testified, I have another image made by you that indeed you were doing a better job, cheaper. I mean a substantially better job.

The WITNESS: Yes, sir.

2237 The COURT: All right.

By Mr. BERNSTEIN:

Q. You made the operation of International much better after you acquired it, did you not?

A. We think we did.

Q. You put in pre-registry that made it a lot more efficient?

A. Yes.

Q. And you showed them how to improve their machines and their maintaining and repairing their machines, did you not?

A. Yes, sir.

Q. You put in art work for their commercial department?

A. Yes.

The COURT: I want to ask you, Mr. Bernstein, something. I am not inviting an argument and I know you all have one, but what is wrong with that?

Mr. BERNSTEIN: Nothing, your Honor.

The COURT: All right.

Mr. BERNSTEIN: I would like to reserve a more complete answer to the Court on the legal effect of the evidence when
2238 it is all over, if the Court please. I would like to develop——

The COURT: I wanted to know if there was any criticism of a man——

Mr. BERNSTEIN: None whatsoever.

The COURT: ——buying what appears to be a tired plant with tired management, family management, and putting it in first class shape, I want to know your views.

Mr. BERNSTEIN: The Government——

The COURT: You are going to enlarge later, but there is nothing criminal in making an improvement?

Mr. BERNSTEIN: There is nothing criminal in making an improvement, it is highly commendable, it should be encouraged, the Government should encourage it. The Government wants to stop the elimination of a competitor and wants the competitor to make improvements, we want competition so that Mr. Koessler will improve his Greater Buffalo plant in competition with the International plant when Hearst gets
2239 additional business, and in that competition there will be improvements.

The COURT: Are you going to show that the so-called competition could meet the standards that he described that he met?

Mr. BERNSTEIN: The Government contends——

The COURT: I used the rather wornout expression, "mouse-trap", but if somebody else catches the mice I can't expect much, can I?

Mr. BERNSTEIN: No, sir, the Government contends had there not been collusion between Mr. Nicht and Mr. Koessler, Mr. Nicht would never have permitted Mr. Koessler to take his business away from him, and if Mr. Nicht had to do it by improving the International plant, he would have done it, he would have gotten the talent, bought the talent, hired the talent, put in the money in the International plant to do it.

He could have done it just as well as Mr. Koessler did
2240 in competition with Mr. Koessler. That is the Government's position.

The COURT: That is your theory?

Mr. BERNSTEIN: That is our theory, your Honor.

The COURT: All right.

Mr. BERNSTEIN: And that theory I would like to reserve the right to develop after the evidence.

The COURT: All right. I can't help but being struck by one thing, Mr. Koessler is a printer, Nicht was not a printer.

Mr. BERNSTEIN: That is right.

The COURT: Throughout this lawsuit I have been at least in some way made aware that indeed Mr. Koessler is a printer, a first rate one, who is a little like some people I know down in the country named Wilson, who were with Ford years ago. They were journeymen mechanics. You could get all the M.I.T. men in the world at General Motors, and those fellows could look at something and say that needs a
round knob down here and put it to work, and it
2241 would work. Now, I got the image of Mr. Koessler and those who surround him, that they can take an old piece of a printing machine and by the grace of God and native ability make it work, make it work faster and better. You were talking about mats the other day, which are terribly expensive and time consuming, all kinds of pieces needed. At one time in the past the evidence was that Mr. Koessler put it together, not having four pieces, or words to that effect—I am not mechanical enough to know what went on. Now, you see, I know your point, there may be some correspondence, and undoubtedly there is, letter writing subject to two meanings. We have had some of Koessler's meanings, which may not be exactly what appears to be the meaning when you first read it, unless you read it all and
get his version of it. But there is, I think, a possible
2242 explanation for many of these things, based on the

skill of a producer of a product. I will give you a chance to sum up in writing or orally on the whole thing, of course. But this you must realize, I am looking at this case from this view; of course you are doing the best you can to persuade me the true view is collusion.

Mr. BERNSTEIN: I respect and appreciate your Honor's expression of his tentative thinking as the evidence is going along.

The COURT: Isn't that about it?

Mr. BERNSTEIN: It is helpful to the Government to have—

The COURT: Do you think I should have other views?

Mr. BERNSTEIN: The Government thinks you should have another view, and I would like to develop that later. I would like to say at this time—I think it would be helpful
2243 to the Court and clarify the situation—at the moment

I would like to say just this, that that part of your Honor's remarks which refer to the technical skill and ability of the Koesslers, the Government subscribes to wholeheartedly. It agrees that Mr. Koessler and his company is a very efficient, very effective company, and could be a very, very effective competitor and prior to the purchase of International was an effective competitor against International. I emphasize against International. There is a little bit of legal mumbo-jumbo that International wasn't selling to any newspapers, International was only selling to one customer, King, and King was doing the selling to the newspapers, King was in this anomalous position of being both the potential customer of Greater Buffalo and also being a competitor of

Greater Buffalo. It is the Government's position that
2244 Greater Buffalo was in competition with International to the extent it got business of King's away from International, it was taking competition away from International. If it could do it by a better job, a better price, it was all well and free to do that, except if it did it as part of a collusive deal, "You leave my customers alone and I'll leave yours alone and I'll give you a share of the commission that I earn on any new business that I get", that is not the kind of competition that the antitrust laws permit.

The COURT: Do you know anything about International before Koessler took it over?

Mr. BERNSTEIN: Yes.

The COURT: Do you contend it was turning out as good a product as he was?

Mr. BERNSTEIN: We will develop that through Mr. Gorman when he testifies. He was in charge of the International 2245 operation. We will get the full picture of the International operation and I would prefer——

The COURT: Well, you know we have no jury here. You may wonder about these stops and breaks; but I am interested in learning the whole picture, and I feel that I stop you when I have to and talk to you and to Mr. Raichle when I have to, with the view of finalizing some time what I consider the facts to be.

Mr. BERNSTEIN: I appreciate the opportunity of learning your Honor's tentative thinking on the matter.

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, let's explore that question as to whether or not Greater Buffalo was in competition with International. International was a printer of color comic supplements?

A. A printer.

Q. A printer of color comic supplements?

A. Yes.

Q. Did it print anything else but color comic supplements 2246 at the time Greater Buffalo acquired the stock of International?

A. Yes, I think they printed comic books and a few things like that.

Q. For anyone other than King?

A. No, I think they printed—I'm not sure—they printed some for King, whether they did for other people, I don't know. I don't think so.

Q. The product that International made was a printed comic, either a supplement or a comic book, is that correct? Wasn't that their product?

A. I think so.

Q. Wasn't that Greater Buffalo's product in part—you had other work—wasn't that your product?

A. Yes.

Q. Wasn't that Eastern Color's product?

A. Yes.

Q. Wasn't that Acme's product?

A. Yes.

Q. Wasn't that later Southern Color's product?

A. Yes.

Q. Didn't you regard yourself as in competition with them for the printing of that product?

A. In competition with who?

Q. Acme?

2247 A. Yes.

Q. Eastern?

A. Yes.

Q. Southern?

A. Yes.

Q. And International for King's business?

A. Wait, International didn't—we were in competition with Acme, Acme sold printing. We were in competition with all these other people, Southern, they sold printing, Eastern, they sold printing, but we were not in competition with International because International didn't sell printing.

Q. All right, let's clarify that. Did Eastern print for any syndicate that had contracts with newspapers?

A. I don't know. It could have.

Q. You don't know?

A. I don't know.

Q. How about Acme, did Acme print for any syndicates that had newspapers as customers?

A. They could. I think Acme printed West Coast material for NEA, possibly for other people.

Q. Now, to that extent was Acme in competition for NEA's business with Greater Buffalo Press?

A. Acme was in competition with Greater Buffalo, yes.

Q. For NEA's printing?

2248 A. For everything.

Q. Including NEA's—

A. Including NEA.

Q. Wait a minute, why was not International in competition with Greater Buffalo for King's business?

A. Because International didn't sell their printing.

Q. They sold it to King?

A. Yes, they didn't sell it to the newspapers.

Q. I understand, I understand. Greater Buffalo sold printing in two ways; it sold it to the syndicates, NEA, didn't it? Didn't it?

A. Sure.

Q. You also sold it to newspapers?

A. Yes.

Q. International only sold it one way; it sold it to the syndicate, King?

A. They were a sub-contractor for King Features syndicate.

Q. I know that is your legal conclusion.

A. It is a fact.

Q. That is your conclusion, Mr. Koessler. I am trying—

Mr. RAICHLE: Just a minute, please.

By Mr. BERNSTEIN:

Q. I am trying to ascertain what happened.

Mr. RAICHLE: In his understandable zeal, counsel is
2249 arguing with the witness and I object to that. The facts
have been developed for your Honor to reach these conclusions.

The COURT: I understand. Now, Mr. Koessler says they were a sub-contractor, and you have a version of how business was done, that is, that King contracted to have this stuff printed with International.

Mr. BERNSTEIN: That is correct. I am trying to ascertain also as another fact that Mr. Koessler testified in direct examination, in answer to Mr. Raichle's questions, and I recall I objected and the Court overruled the objection; was International a competitor of Greater Buffalo? I am trying to ascertain from this witness not only those simple facts, but whether this witness, himself, regarded International as a competitor. This, of course, is cross-examination, and I am trying to explore
2250 that.

The COURT: You fight with him because he says they were sub-contractors. He already demonstrated to me that while he needs lawyers from time to time he is pretty well up on things, watches things pretty well himself. He talks about the theater fight some years ago, he had that accurately portrayed. I remember that Shea fight. He says they were sub-contractors and I am going to let him say so. If you want to probe that further, go ahead.

By Mr. BERNSTEIN:

Q. I am talking about the time—limiting our discussion now, Mr. Koessler, to the time immediately prior to when Greater Buffalo purchased the stock of International, while you were in the negotiations with Mr. Gorman for the purchase of International, during that period from about January, 1955

through June, 1955. At that time, to your knowledge, King had a contract with International whereby International would print only for King, isn't that correct?

2251 A. Gorman told me they had such a contract with

King, yes. It was a contract that only ran for six months, as I remember it. It had been a ten-year contract, it lapsed and was being continued for another six months.

Q. International had one customer and that was King, is that correct?

A. Yes, as far as I recollect.

Q. What was International selling to King?

A. They were selling printing.

Q. Were they selling the same product that you were selling to King for the Toledo, Erie and Youngstown runs?

A. Yes, they were selling the same product, but let me straighten you out, if I can. General Electric is in the refrigerator business, and Sears, Roebuck is in the refrigerator business, selling them. But Sears doesn't make any refrigerators, and General Electric—or maybe not General Electric but RCA contracts—they are in the refrigerator business, they contract to have the refrigerators made. RCA contracts with somebody in Indiana, Sears, Roebuck contracts with somebody else. I don't know the name of the company that makes them, and neither do you, unless you are smarter than I am. Sears sells that product, it's a Sears, Roebuck refrigerator, and the

2252 person that makes those refrigerators for them isn't competing with the other refrigerator maker down there that makes the refrigerators for RCA.

Q. If the person who made that refrigerator did also sell—if Sears didn't make any sales because General Electric was selling direct, Sears wouldn't remain in business, nor General Electric—if Sears made all the sales, General Electric didn't make them, General Electric wouldn't remain in the refrigerator business, and by the same token, is this correct—withdraw that question.

Mr. RAICHLE: It is a philosophical observation more than a question.

Mr. BERNSTEIN: I will withdraw the question and approach it this way.

By Mr. BERNSTEIN:

Q. When Mr. Nicht discussed with you—

The COURT: Excuse me just a minute. Isn't what you are

saying this; that King had International wrapped up virtually for its complete product except for trifles?

The WITNESS: Exactly.

2253 The COURT: No one had you wrapped up?

The WITNESS: Exactly.

The COURT: You were looking for the whole field?

The WITNESS: Right.

The COURT: Isn't that about what you are trying to say the distinction is? This was basically King's tool, exclusive tool, for production, and it wasn't competing in the field for printing?

The WITNESS: No, they were sub-contractors, like this machine shop that makes the refrigerators for Sears, Roebuck don't make a product they sell on the market of their own.

By Mr. BERNSTEIN:

Q. Nobody had Greater Buffalo wrapped up, as far as printing color comic supplements?

A. No. Nicht tried to do it.

Q. H wanted to wrap you up?

A. He wanted to, we didn't want to get wrapped up.

Q. He talked to you several times about that?

A. Yes.

2254 Mr. RAICHLE: We have been over this so much.

Mr. BERNSTEIN: Just a minute——

The WITNESS: He talked about being exclusive representative for what remained in the business, yes. We didn't agree to do it.

By Mr. BERNSTEIN:

Q. At the time you printed the Toledo, Erie and Youngstown runs for Mr. Nicht, you were seeking from Nicht additional business to be printed at the Greater Buffalo plant rather than at the International plant, isn't that correct?

A. We were looking for business from everybody.

Q. So then my statement is correct?

A. Yes.

Q. And when did Mr. Nicht begin the discussion? Was he also discussing with you that time switching the business over from the International plant to the Greater Buffalo plant, his business, the business that he was giving International, was he talking about switching that to Greater Buffalo Press?

A. In the case of Toledo, Erie and Youngstown, yes.

Q. How about other newspapers?

A. I don't think he talked about any other newspapers
2255 at that time.

Q. When did he first start talking about switching Hearst's business over to Greater Buffalo?

A. I don't think he ever talked to me about that.

Q. Well, that is where I guess there is a misunderstanding. I got the impression yesterday from what you said that Mr. Nicht was always making statements to you about getting you the Hearst business.

A. Generally, yes, but you are talking about specific instances and specific papers and things like this.

Q. Was he talking in that general tone?

A. He was always making it appear that he could be a great factor and help us to a great extent.

Q. By putting printing business in the Greater Buffalo plant with contracts that he would get?

A. That is right.

Q. And was he talking along those lines before Greater Buffalo Press bought the stock of International?

A. Obviously. He talked about Toledo, Erie and Youngstown, we were doing those jobs, and had been doing them for a year.

Q. What I am trying to get clear; on or about the same time, and before Greater Buffalo Press bought International, he was also talking to you about printing Hearst business at the

Greater Buffalo Press plant with contracts that King
2256 would get?

A. Hearst business?

Q. Yes.

A. He talked generally about this big volume that Hearst had which they were doing for themselves, he might be able to swing that.

Q. Right.

A. He didn't say when or where or how, but maybe.

Q. Did you give any thought to the desire to get that business, were you anxious to get that business?

A. We were anxious to get any business.

Q. Just that business?

A. That business, yes.

Q. And was this before you bought International's stock?

A. These conversations go off before that? Yes, I think they did.

Q. Now, did he also at that time talk about being your exclusive, at the same time he was talking about—

A. No. The time he began to talk about exclusive is outlined there.

Q. I want your recollection.

A. That is it.

Q. What is your recollection as to when he began talking about exclusive?

A. Whatever the papers indicate.

2257 Q. You mean the letters you wrote to Mr. Nicht in which you said this is the understanding that could go into an agreement, is that correct?

A. Approximately that time.

Mr. RAICHLE: June of '55, June 13th.

By Mr. BERNSTEIN:

Q. June 13, 1955, that was immediately before the acquisition of the International Color stock?

A. Yes.

Q. Now, did you wish to have Mr. Nicht believe that you were interested in getting the Hearst business and lead him to believe that you were entertaining the suggestion that he was making?

A. Did we wish him to believe we were interested in getting the Hearst business? We were interested in getting the Hearst business, yes.

Q. And were you interested in communicating that to Nicht, that you were interested?

A. We told him we were.

Q. And when he suggested that you be his exclusive printer, were you interested in leading him to believe that you were considering that?

A. Did that thought go through my mind at that moment, you mean? I don't know.

2258 Q. What I am trying to find out; were you leading him on?

A. No, I don't think I was leading him on.

Q. When you wrote the letter to him saying that these were the understandings that could go into a contract, you said he would be the exclusive; were you intending to lead him on at that time?

A. I was putting in that letter what he made as his conditions, subject to approval by attorneys and subject to approval by the other members of our company.

Q. Did you tell him that, it was subject to approval?

A. Yes.

Q. You didn't say it in the letter?

A. No.

Q. You told him that orally?

A. Right.

Q. This was in 1955, before you bought International?

A. Yes.

Q. And—

A. Did I say it in that many words? No. I said, "Look, I'm not the whole show here, other people have to approve these things, so we will put them down and I will show them to them."

Q. Am I correct in this? You, as a businessman, you
2259 were not going to let Nicht push you in a corner; on the other hand, you didn't want to say to Nicht, 'I am not going to do it' because then you can't any longer consider Hearst's business or any other business from him, is that correct?

A. You ask a lot of questions. Say that question again.

Q. I'll say it simply. As a businessman, a good businessman, you did not want—

A. We didn't want to offend Nicht.

Q. You didn't want to turn him down, you didn't want to say under no conditions would he be exclusive, you didn't want to tell him that on June 13, 1955, when you wrote that letter?

A. If we had to turn him down we wanted to do it in a nice way.

Q. You wanted him to believe there was still some possibility for it?

A. There was up until the time that people other than myself said no.

Q. Was there a possibility of it up until—when you say that, you mean up until 1958, when you sent the letter to him saying this agreement is no longer in effect?

A. No, until Mr. Raichle said we shouldn't do it.

Q. In 1956?

2260 A. 1955, I think.

Q. Whatever the date was, we will see that from the record. In any event, until the time Mr. Raichle said you shouldn't do it, there was the possibility that you would be the exclusive?

A. Mr. Bernstein, I don't understand all the workings of the antitrust laws in late years. I had a very, very bad experience with the Government back during the war, so I didn't know whether you could make these agreements or not. I had a bad experience where a printing company created a monopoly and used the Government to kite its prices. We went ahead and made ink and we were told by the Government to stop making the ink, despite the fact we proved under the ruling of the Government these people could—the ink people could get together and they could raise the price of ink, and that you could not resist them by going in the ink business yourself. Mr. Raichle helped us out on that case down in Washington and we got the order set aside. Frankly, I don't know whether the Government takes the position one way that you can have a monopoly, and the other way that you can't.

Q. Mr. Koessler, we are trying to find out the facts. Mr. Raichle and I will argue this with the Court.

2261 A. I wish you would argue with him about the ink business.

Q. Right now we are trying to develop the facts. We can't reach any legal conclusions until we get all the facts, until we get all the honest facts, not the way we would like them to have been. I appreciate the fact that you have been candid, very forthright, and I would like, therefore, your continued cooperation along that line, to get the facts, not you and I engaging in a debate about law.

A. You asked me what was in my mind at a certain time?

Q. You don't know?

A. I can't tell you that.

Q. I would like you to reconstruct now—you have this letter in which you said to Mr. Nicht on June 13, 1955, that these are the understandings that you and he have reached as businessmen, that could go into a formal contract. As I understand your testimony, you have some reservations as to whether it might be legal or might not be legal because you don't know all the foolish ramifications of the law, so therefore as a businessman you would make that deal if it was otherwise legal, is that correct?

A. And if it was otherwise approved by other people in our company.

2261(a) Q. Of the other people in your company—

A. Not the legality of it, but the common sense of it, whether it was a good thing for us to do.

Q. In your opinion, as of June 13, 1955, when you wrote that letter to Mr. Nicht, if it were legal, in your opinion was it a common sense, good business, good thing to do?

A. Was it my—no, I didn't like the provisions of those things.

Q. So—

A. It was against our interest, economically, to make any agreement like that.

Q. You were not anxious, if you had your druthers you would not want to do it?

A. No.

Q. But it made good business sense not to tell that to Nicht?

A. It made good sense not to offend Nicht.

Q. You wanted him to believe there was still some possibility of working out that exclusive sales arrangement if you could do it legally, and you wanted him to continue to believe that until 1958 when you sent him that letter saying this signed agreement is not in effect?

2262 The COURT: Wait a minute. As I recall, he got a letter first from Nicht saying he can't go along with it, and then he reiterated, "We can't go along with you either, our Board and our lawyer won't." Wasn't the first move from Nicht? Yes, sir, the first move was from Mr. Nicht.

Mr. BERNSTEIN: Yes, sir, the first move was from Mr. Nicht.

By Mr. BERNSTEIN:

Q. Until Nicht made the move you wanted him to continue to believe there was some possibility that this could be worked out?

A. This is 1958; you are talking about a letter that was in 1955, three years earlier.

Q. I am talking about—let's talk specifics, Mr. Koessler, here is P-72—

The COURT: All I want to do is get the order of things; as I remember, Mr. Koessler sent down some paper that both principals signed, which is unusual, as I understand business

normally; however, in due course Nicht said that paper, 2263 that we have been talking about, is out because the Board won't go along with it and he considered it a nullity. In due course Mr. Koessler said, "My people won't go along with it, it is a nullity indeed."

Mr. BERNSTEIN: Right.

By Mr. BERNSTEIN:

Q. When you told Mr. Nicht that was a nullity, you said to him in D-5, "I have had no opportunity to present this agreement to our own Board of Directors for their approval." Now, was that something that you were saying to him in that particular fashion because that was so, or was that something that you were saying to him as a business way of saying, 'Well, if you don't want it, I don't want it,' and really you didn't want it anyway; so you were saying to him that you didn't want this contract from the start, you were saying to him as a nice business phrase, "I have had no opportunity to present this to the Board of Directors"?

A. As a matter of fact, I hadn't taken it to the Board of Directors, I was rather afraid to.

Q. Who was on the Board of Directors?

A. My brother Kenneth, my son and Mr. Hammond, 2264 and the rest of them.

Q. As a matter of procedure and policy within your company, when you got the Buffalo Color Press agreement to buy the equipment, and so forth, did you have to get their approval first, or was it a matter of business, you make the decisions, they generally go along with it, they respect your position in the company?

The COURT: Let me ask you; what is your point? Are you trying to leave with me the impression that Koessler lulled Nicht into something and then Koessler grabbed International Color Press down there in Wilkes-Barre and said, "I got it, things are over with"?

Mr. BERNSTEIN: Yes, I am trying—

The COURT: How do you justify Nicht's letter in the light of that interpretation wherein he said to Koessler, "All that is done, this so-called plan we had"? Why would he write such a letter?

Mr. BERNSTEIN: He had the oral understanding that that

2265 was going to work, he was going to get the commission anyway. Mr. Koessler said he had been receiving commissions on these very papers mentioned in Schedule

A. Mr. Koessler is still paying a commission on these papers.

The WITNESS: I am not.

Mr. BERNSTEIN: Some of them. Mr. Koessler says he is doing it for the reasons he stated.

The COURT: You don't go along with those reasons?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: So——

The COURT: It is true, isn't it, that nobody, Koessler or anybody else, can print that pink stuff unless King is obliged to give it to them, to the paper. They can cut that off like a flash from a paper?

Mr. BERNSTEIN: King?

The COURT: King controlled these artists and cartoonists and painters. As I get it, they are short-term contracts.
2266 If they want to pull that away from the Buffalo News, for example, they pull it away and nobody can print it, Koessler or otherwise?

Mr. BERNSTEIN: They can't do it legally. Part of the purpose of this suit is to stop it.

The COURT: I am talking about King.

Mr. BERNSTEIN: The primary purpose of this suit is to stop King.

The COURT: I refer to one thing; it has been recited here that the commitment of King to International was only a matter of a few months to go. That isn't a perpetual right to have King Features?

Mr. BERNSTEIN: We are talking about two different things.

The COURT: I'm not. I'm talking about these attractive features.

Mr. BERNSTEIN: These attractive features were under contract and some newspapers had contractual rights with King so that King could not cut them off. If King would cut
2267 them off by reason of the fact that the newspaper wasn't giving them the printing business or King would charge more for a feature because the newspaper wasn't giving King printing business, that would be illegal——

The COURT: A tie-in?

Mr. BERNSTEIN: A tie-in, and this lawsuit is seeking to stop that.

The COURT: Mr. Koessler said he was being blackjacked into it.

Mr. BERNSTEIN: This lawsuit seeks to stop that. It is being tried in several phases, in several issues. Right now we are talking about another issue, not the tie-ins. NEA is charged with having tied in to, and that is the subject for another hearing by this Court.

The COURT: When is that going to be?

Mr. BERNSTEIN: We would like the Court to schedule that as soon as possible. We asked Mr. Stevens to do that as part of this proceedings and he said he was not ready to do it.

The COURT: We will talk about that. Okay. Mr. Bernstein, can I disagree with you?

Mr. BERNSTEIN: Yes, but let's discuss that later.

The COURT: If you've got something to say evidentiary in nature, touching on my comments, I want to hear it, because I am looking for light here, and you appreciate that normally we could not run a trial like this before a jury, but there is no jury, and if you have something that you think will enlighten me, Mr. Koessler, say it now.

The WITNESS: All right. Mr. Bernstein just said to you, Judge, that if King Features, as a consequence of losing a printing contract, cancelled the features or even if they raised the price of the features it would be illegal. Under that consent decree it is not. In other words, if the newspaper cancels the printing contract, the newspaper is specifically—
2269 or the syndicate is specifically authorized and permitted to raise the prices, they only have to wait three months to do so.

Mr. BERNSTEIN: May I—

The COURT: Here, that is another matter. You appreciate that the Government and King, Hearst, et cetera, got together and in some way solved their problem in this lawsuit. That was not specifically before me, except for general approval. I know you grieve about it, but I don't want to take the time to get into that.

Mr. BERNSTEIN: I wonder if I could take thirty seconds so that Mr. Koessler would have a different frame of mind—

The COURT: Tell him that in the hall afterwards.

Mr. BERNSTEIN: Very well, your Honor.

2270

By Mr. BERNSTEIN:

Q. Is this a fair summary or is this an unfair summary of what we have just been saying up until now; that from the time that Nicht first discussed with you the printing of the Toledo and Erie newspapers, before you got International and he was discussing with you giving you the printing of the Hearst business that he would get and have it printed in Greater Buffalo Press, have it printed in Lufkin, have it printed in Sylacauga, and that Greater Buffalo Press and Lufkin and Sylacauga would be the only printers for Nicht, and that Nicht would be the only—he didn't say that?

A. When was that supposed to have taken place?

Q. I am trying, if I can, to summarize the relationship, the business relationship between—I am going to say you, meaning Greater Buffalo Press, and I am going to say Nicht, meaning King Features—I am trying to summarize the business relationship with you from the period of 1955 or 1954 until 1958. And prior to that time, prior to 1954, I gather from your testimony that you were taking business away from him, you were growing and you were competitors, you hadn't done any printing for him?

A. We took some business away from him, relatively
2271 small. We grew through getting the business of the newspapers that printed their own. We took some.

Q. Were you beginning to take more and more away?

A. No, it was difficult. The jobs that King had, they had by virtue of tying them up with the features, and you could not pry them loose unless the newspaper got awfully mad.

Q. So that he made the overture to you about printing the Erie or did you seek it from him? About printing—what were except retaliation."

A. Yes, yes—

Q. Toledo, Erie and Youngstown, he made the overtures to you?

A. That is right, to get a lower price so he would make more money on it.

Q. Beginning with that time your business relationship with Nicht changed because up until that time he was not a customer of yours, is that correct?

A. Well, if that's a change, now we are doing some business for him, yes.

Q. That was about the first time; certainly not prior to that did he talk about being the exclusive agent for Greater Buffalo or he didn't talk about giving you Hearst business; it was starting with the Toledo, Erie and Youngstown runs that he began those conversations?

2272 A. Yes. I should say that is about the time, yes.

Q. And you began to have more and more contact with him with respect to doing printing for him, is that correct?

A. Yes, I imagine such times as we met, which wasn't too often, probably once or twice a year, he would talk about the printing we might do for him, and prior to that time he sent salesmen up here to try to get us to print for King, and we could never give him the kind of prices that International was giving him.

Q. And were you beginning to have more and more frequent telephone conversations with him?

A. No.

Q. Was most of the communication done by letter?

A. Most of the communication was done—he would call up—whatever letters there were, I think you have.

Q. Otherwise it was either by letter or these telephone conversations. infrequent meetings?

A. Infrequent meetings.

Q. And then as he discussed you printing more business for King, as he discussed that, he tied that in with being the exclusive sales agent for you, and then you felt it was good business not to offend him and to let him believe that was possible, up through 1958 when you wrote this letter and said it
2273 was a nullity?

Mr. RAICHLE: He wrote the letter. When Nicht wrote the letter.

By Mr. BERNSTEIN:

Q. And you responded to Nicht's letter?

A. We think it is good business not to offend anybody. We didn't want to offend Nicht as a potential customer and as a customer, if we didn't have to.

Q. Right. So if you didn't have to offend him, you wanted him to believe that up through 1958 there was a possibility that he would be exclusive sales agent?

A. No, because even that is corrected in Mr. Graustein's proposal, they were not going to be the exclusive sales agent. A lot of those things were taken out of there.

Q. But during that time he was discussing with you that—you can't use the word exclusive—Greater Buffalo will keep its customers, King will keep its customers, and on new business, if Greater Buffalo got it, King would get a commission on it?

A. It didn't have to be discussed that we were going to keep our business customers because we were. I don't think it had to be discussed that he was going to keep his business, if he could.

2274 Q. When you say that do you mean each of you understood that?

A. I understood it. I am sure Nicht understood it because he was not giving up anything.

Q. What about new business?

A. We spelled out a certain number of accounts, four or five of them, and I said to Nicht, or proposed tentatively, "You can be the exclusive sales agent for everything except this." Actually, in practice, there wasn't anything. There wasn't very much real potential business.

Q. If some should develop you led him to believe he would have it?

A. We wrote those letters—I told him that I could not promise him anything, all I could do is take up the suggestions he made with our people.

Q. All right. I show you P-41 in evidence, that is a letter dated February 9, 1956. P-41 in evidence is a letter from you to Earl Anderson of the Buffalo Color Press?

A. Yes.

Q. Dated February 9, 1956, and that is before the time that you bought Buffalo Color Press?

A. Yes.

Q. You say to him: "Dear Earl——"

2275 Mr. MOORE: Wait a minute, not before.

Mr. BERNSTEIN: I apologize. I meant it is after. October, 1955 is the date. I am sorry.

By Mr. BERNSTEIN:

Q. It is after you purchased the Buffalo Color Press and were printing for NEA?

A. Yes.

Q. You say: "Dear Earl: I called Frank Nicht on the Rome, Georgia matter Tuesday and he sent me this wire today, 'Rome, Georgia contracts were negotiated last year embracing supplement printing and Feature budget.' I don't know if this is

within or without the rules but I sure wish to hell this poaching would stop. Kindest regards." You were writing this to Earl Anderson of NEA?

A. Right.

Q. You say you called Frank Nicht on the Rome, Georgia matter Tuesday; what did you tell Nicht on the Rome, Georgia matter when you called him?

A. I told him that NEA was squawking about him taking jobs away from them by combining the features and the printing together.

Q. What did he say?

2276 A. He said that is exactly what he did. He intended to—he was going to continue to do it.

Q. He sent you that wire that you quoted there?

A. Yes.

Q. What does the wire mean?

A. He sold the job by combining the features and the printing.

Q. He said, 'Rome, Georgia contracts were negotiated last year embracing supplement printing and Feature budget.' What does "Feature budget" mean?

A. I don't know, but it is my understanding he sold the combination package of the features and the printing.

Q. And did he tell you therefore he felt that was his account and he was going to keep it?

A. Sure, he was going to keep it.

Q. Did he tell you that?

A. I don't know, apparently it certainly was intended.

Q. What I am trying—

A. He was already printing it.

Q. Why did you call him?

A. Because Earl Anderson from NEA asked me to.

Q. And now you make this statement: "I don't know if this is within or without the rules but I sure wish to hell this poaching would stop." Did you mean that you pre-

2277 ferred, as far as Greater Buffalo Press was concerned, you preferred that NEA keep its accounts, Greater Buffalo keep its accounts, King keep its accounts and there be competition for the new business?

A. No, I didn't mean that. It didn't make a bit of difference to me. What I meant was this, that NEA was squawking that Nicht was committing these illegal sales, or devoting himself to securing these sales by illegal means, and they asked me

to call him, call his attention to it, and I did it. It didn't make any difference to me if NEA got the job or King, we were printing for both.

Q. We will have some letters later—

A. But they were bothering me, both of them, and I would like to get rid of the bother. NEA calling me, King calling me, everybody squawking, I wanted to get rid of that annoyance.

Q. It did make that difference to you, and didn't it also make a difference—I think we will have some letters here later on—let's see if this conforms to your present recollection without the letters; isn't it a fact if—we have got the next letter, let's look at P-42 in evidence. P-42 in evidence is another letter to you from Mr. Anderson—no, it isn't, it goes to your brother, Kenneth Koessler. He says—isn't the effect of
2278 this letter—would you read it over, please—we won't take the time to read all of it.

The COURT: Read that during the recess. We will take a short recess now.

(Thereupon the Court was in recess at 11:20 A.M.)

2279 (Proceedings resumed, pursuant to recess, commencing at 1:15 P.M.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION BY MR. BERNSTEIN (CONT'D.)

Q. Just before the recess, Mr. Koessler, we were exploring the question of whether it made any difference to the Greater Buffalo Press, as a printer, as to NEA's competition with King and its complaints that King was taking away some of its customers. I show you P-42 in evidence, a letter from Mr. Anderson, dated March 4, 1960. He is talking about the Sioux City, Iowa Journal. He says: "Dear Kenneth: You have been aware of the difficulty we have had in holding the run at the Sioux City (Iowa) Journal due to the low quotations from King Features service." In the next paragraph he explains what kind of run it is. In the next paragraph he says: "In order to hold this run, after taking full advantage of the fine service we have given them over the years and every possibility in
2280 the baggage rates, we had to make a quotation here that brings your printing rate to \$15.82 per thousand, F.O.B. Buffalo. I know you and Walter don't like this one, and

I can assure you that it is just as tough on us." He then makes another two sentences in there and then he says something else in the last part of the letter. Mr. Koessler, doesn't this show in this letter that NEA was telling you that he had to give you a lower printing rate because of the price that he had quoted to the newspapers and, therefore, in order for NEA to get the business, he had to reduce your printing rate, is that correct?

A. That is what he said in the letter, yes.

Q. Now, P-43 in evidence is your reply to Mr. Anderson, dated March 15—

Mr. STEVENS: I object to the characterization, let the witness say what it is.

By Mr. BERNSTEIN:

Q. I will withdraw the question, and ask you, Mr. Koessler, to look at P-43 and P-42, and I invite your attention to the third paragraph of P-43, talking about Fargo and Sioux Falls, and look at P-43, the first paragraph, and I ask you whether or not P-43 is a reply to P-42?

A. You are not talking about the same thing. You are getting yourself all confused here, Mr. Bernstein. You are talking about Sioux City here; this one has to do with Sioux Falls.

Q. Are they two different papers?

A. Yes.

Q. Is P-43 a reply to P-42?

A. P-43 is a reply to the last paragraph of P-42.

Q. Very well. In P-43 you say, "Dear Earl: Frank Nicht has been in the hospital for the past three weeks. When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation."

The COURT: Wait a minute, read that again. "I am going to tell him——", what? Give me the date of this communication?

Mr. BERNSTEIN: March 15, 1960.

The COURT: Read that again, please?

Mr. BERNSTEIN: "When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation."

2282

By Mr. BERNSTEIN:

Q. Did you talk to Mr. Nicht?

A. No.

Q. And what policy were you referring to?

A. I didn't talk to him about it.

Q. When you wrote to Mr. Anderson you said that when Nicht returned to the office you were going to tell Nicht that the policy that Nicht was pursuing was breaking down the market.

A. I was still referring to the policy of tying up the features and printing.

Q. Who printed that job, the Sioux City (Iowa) Journal referred to in P-42?

A. We did.

Q. For NEA?

A. Yes.

Q. Did you have to reduce your printing rate to NEA as Mr. Anderson suggested?

A. I think we did temporarily, then they arranged to get to reduce the section to eight pages, we got back on the regular scale basis.

Q. Did you reduce your price as a result of King's lower quotation to the Sioux City Journal?

A. We reduced our price in accordance with the request of NEA, for the moment.

2283 Q. For the reasons that Mr. Anderson stated in P-42?

A. That King had put in a lower price, yes?

The COURT: Let me ask you, have we ever had a history of this Nicht at all, where he came from, whose man he was?

Mr. BERNSTEIN: We will get that from Mr. Gorman.

The COURT: Is he from the old Hearst outfit or not? Is he one of the originators of the Hearst dynasty?

Mr. FELDMAN: I think he had been with them about thirty years.

The COURT: Thirty years beginning when?

Mr. FELDMAN: At the time of the beginning of this lawsuit.

Mr. BERNSTEIN: In the thirties sometime.

Mr. FELDMAN: It is in the deposition, he worked up.

The COURT: You mean he had been there in 1900 with old Hearst?

Mr. FELDMAN: No, since the thirties. He became head of King Features syndicate, the sales department, handling the

King, and he is writing to Mr. R. K. Rogers, who was acting in Nicht's capacity at that time, and this letter, if I can sum it up briefly—

Q. May I look at it?

A. Yes.

The COURT: Is that letter in the case?

The WITNESS: No, Judge. It explains what King Features can do to somebody.

The COURT: Put it in here. Is that something you people know about, have you considered it?

Mr. BERNSTEIN: Let's have it marked for identification.

(Thereupon letter referred to was marked plaintiff's exhibit P-100 for identification.)

The COURT: This is something that Mr. Koessler thinks is important to his defense. Do you know about it?

Mr. BERNSTEIN: I haven't seen it myself. I am sure it is an authentic document. I would like to get a copy.

Mr. RAICHLE: There is a particular paragraph I 2289 think you would like to have.

Mr. BERNSTEIN: May I read it first?

Mr. RAICHLE: Yes.

The COURT: Why read it? You were cross-examining and this man asked for a certain letter which he wants to make an explanation upon. Let him go. You can cross-examine him.

The WITNESS: Judge, this is a letter from a salesman at King Features reporting back to the person in authority at that time, Mr. R. K. Rogers, an assistant to Mr. Nicht. This has to do with the Rome, Georgia account here that Mr. Bernstein just examined me about.

The COURT: You have an explanation about it?

The WITNESS: No, I gave the explanation.

The COURT: You think this is important?

Mr. RAICHLE: There is a paragraph that you wanted to read to illustrate?

The WITNESS: It illustrates what King Features does to its newspapers that cancelled the printing part of the agree-
2290 ment when they have a printing-feature tie-in and this salesman is telling Mr. Rogers that King Features got this Rome, Georgia job from NEA, took it away from NEA, and they did it by combining the features and the printing. Then some time in 1959 or somewhat earlier Southern Color Printing some along and took it away from King Features.

By Mr. BERNSTEIN:

Q. By combining what?

A. I don't know.

Q. They didn't combine King Features by taking it away?

Mr. RAICHLE: Read the paragraph.

The COURT: Read the paragraph you think is pertinent.

The WITNESS: The paragraph points out that King Features does raise the price of the features.

The COURT: Read it, Mr. Koessler.

The WITNESS: "Then I told him we could continue our present budget of daily features, plus the following
2291 Sunday pages; Blondie, Barney Google, Beetle Bailey, Phantom, Mandrake, Flash Gordon and Steve Canyon, plus Steve Canyon daily for a total rate of \$108.50 per week. This represents an increase in weekly billing of \$48.42; as the daily features which they are now receiving they are getting for \$60.08 per week." Then over here, another paragraph, the salesman says, talking about the publisher, "He seemed genuinely disturbed over the quotation of \$108.50 for the budget of features and I am afraid he is not going along with us at that rate. However, at this time I do not feel we should rush in with any offer of a reduction."

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. STEVENS: May we read it, please?

The COURT: Barney Google, is he still around?

The WITNESS: Apparently.

Mr. BERNSTEIN: I offer P-100 in evidence.

Mr. RAICHLE: No objection.

2292 Mr. STEVENS: Objection on behalf of NEA as to the paragraph which refers to it, the last paragraph. I don't see any way in which we could cross-examine or offer evidence upon it, it is not within Mr. Koessler's knowledge.

The COURT: This is offered as a communication not between you nor Mr. Koessler.

Mr. STEVENS: Yes.

The COURT: It is just an advisory piece of literature in the lawsuit.

Mr. STEVENS: Correct.

The COURT: To characterize a course of conduct.

Mr. STEVENS: To characterize a course of conduct within King as to what it did after it lost a printing contract and how

it raised the price to the Rome newspaper following that. There is a paragraph that relates to NEA.

The COURT: Do you offer it against NEA, Mr. Bernstein?

Mr. BERNSTEIN: I offer it against all parties here, sir.

The COURT: I haven't read this. I will reserve 2293 decision.

Mr. STEVENS: Thank you.

Mr. BERNSTEIN: Can it be received against Greater Buffalo?

The COURT: No. I don't know, it may be—you charge a conspiracy?

Mr. BERNSTEIN: Yes. I said as against Greater Buffalo, reserving decision as against NEA.

The COURT: Against each?

Mr. BERNSTEIN: I offer it against both.

The COURT: I reserve against each. I also have 73.

Mr. BERNSTEIN: I was looking for that yesterday. I offer for identification document number 96, dated December 9, 1955—

Mr. STEVENS: Is that what you previously identified as exhibit 99?

Mr. BERNSTEIN: I can't locate that.

Mr. STEVENS: I have it here that just before we started talking about P-100 you offered something identified as document 96 as P-99.

Mr. BERNSTEIN: I thought I did. I don't have the piece of paper.

2294 The COURT: You were asked about your early beginning, Mr. Koessler, about your initial investment, Charlie Frieberg's initial investment, and how ever since 1926 things have gone well. Let me ask you about Eastern Color Print, I think it is called, are they still alive?

The WITNESS: Yes.

The COURT: There's a thing called Southern Color Print, is that Hornady's?

The WITNESS: Well, in a way it is Hornady's.

The COURT: That is still alive?

The WITNESS: Indeed.

The COURT: Then out near Lufkin, Texas, there was some competitor. What do you call that?

The WITNESS: Acme. Was it in Acme in California?

The COURT: I don't know. Is there competition out there?

The WITNESS: They said we were competition to them. How it could be, that far away——

Mr. BERNSTEIN: Lufkin is Greater Buffalo's plant.

The COURT: I know what Lufkin is. There is a color
2295 print outfit out there, are they still alive?

The WITNESS: Acme Color Print, they are. They are part of the Los Angeles Times.

The COURT: NEA, is that still alive?

The WITNESS: Yes.

The COURT: King?

The WITNESS: Yes, sir.

The COURT: Are they healthy?

The WITNESS: Yes. Another one, World Color.

The COURT: I am asking you this as an expert. Except for the rise in general cost, the price of everything to the public, cars, newspapers, everything; is there, in your opinion, competition in the color printing game now?

The WITNESS: Indeed, very much. As a matter of fact, we haven't raised our prices in twelve years, it is so competitive. In addition to that, the comics have suffered readership, television has taken a lot of readers away from the comics, made the comics less interesting to them.

The COURT: I take it from your recent comments,
2296 which I did not know, that you are trying to take up the slack with the advertising bit?

The WITNESS: Exactly.

The COURT: Now, I am just trying to feel my way through this thing. Can you tell me anything more? You see, the Government says that by reason of your combination, your intentional effort to choke off competition, the public did not get a fair shake, that is what it all amounts to. I am talking about price.

The WITNESS: Our costs have increased at a rate of about three percent a year. The ordinary labor cost increased at a rate of three percent a year. In twelve years that is thirty-six percent. In twelve years we haven't raised the price of our printing, largely because of the newspapers threats to print their own or the possibility that they could print their own. We don't want to raise the issue with them.

2297 The COURT: I take it that despite all these changes that have occurred, you have an excellent operation?

The WITNESS: We think so.

The COURT: You are happy, you are making money?

The WITNESS: Yes, sir.

The COURT: But you say that you now compete actively?

The WITNESS: We have the same competitors we had in 1955.

The COURT: I am asking these questions, if you don't mind, because we have no jury. I am expecting I will receive frank, flat answers without reservations.

The WITNESS: Without reservations.

By Mr. BERNSTEIN:

Q. On the Rome, Georgia paper we just discussed, I gather that in 1956 you had to reduce your printing price to NEA for the Rome, Georgia matter?

A. We didn't print—King got that job. King took it away from NEA.

Q. I meant the Sioux, North Dakota paper.

A. Sioux City?

2298 Q. Sioux City.

Mr. STEVENS: I think, because there seems to be some confusion in Mr. Bernstein's mind, and very understandably, it should be pointed out that P-42 in the earlier portions refers to Sioux City, Iowa; and P-43 that Mr. Koessler very correctly indicated, refers not to Sioux City, Iowa, but to Sioux Falls, South Dakota; and the two cities, although they happen to be in the same general region, are, as any map will indicate, 50 to 75 miles apart and are totally separate communities. We should not be casual or inaccurate in referring to these communities.

By Mr. BERNSTEIN:

Q. May I clarify that? In P-42, Mr. Anderson's letter to you, in the first paragraph he talks about the Sioux City—

The COURT: Excuse me. Let me ask you; you heard Mr. Koessler, I assume, and you heard my probing him about

2389 these changes, this progress that was made. He flatly says he is competitive. That is, I hate to use the expression, my daughter uses it—the name of the game. Do you think now they are competitive?

Mr. BERNSTEIN: I think—

The COURT: That they are trying to do what is right or not?

Mr. BERNSTEIN: We are trying to do what is right, too.

The COURT: I know that.

Mr. BERNSTEIN: What Mr. Koessler—

The COURT: I don't think you are a persecutor, I know you too well, you've got a job to do here. I am trying to be practical. Maybe you haven't probed in recent years, you think something happened in former years, but tell me about today.

Mr. BERNSTEIN: That is what I was trying to do.

2390 The COURT: I opened Sylacauga, I had some limitations on that. I thought it was right to be oppressive. I didn't know that Hornady was using it to advantage, sending out copies of my decree so that he could cooper somebody as I view it. What has happened now?

Mr. BERNSTEIN: I think the letter that your Honor has before him that Mr. Koessler put in evidence, P-100, shows that Hornady—shows that on that particular newspaper in North Dakota—

The COURT: I am talking about Hornady down in—

Mr. BERNSTEIN: It refers to Hornady, that refers to Hornady. That letter says that after NEA took the business away from King because Greater Buffalo quoted a lower price—

The WITNESS: Wait—

Mr. BERNSTEIN: —Greater Buffalo quoted a lower price, NEA took the business away, Hornady came in and took the business away from NEA. That letter is a letter from Nicht's salesman, intra-company, and he said that Hornady is having trouble keeping this account and we can't get it back
2301 from him, NEA is going to get it back, with the printing being done at Greater Buffalo. Mr. Koessler said before—

The WITNESS: Wait a minute—

The COURT: Look—

The WITNESS: I'm sorry.

The COURT: You must realize that every once in a while I want to talk to the lawyers, and you must realize that I have hundreds of lawsuits during the year. This one pops in and out and I have to get some recall on these things, and I ask the lawyers to brief me once in a while.

Mr. BERNSTEIN: Mr. Koessler testified before that Greater Buffalo was then able to get the run back and get a higher price. So I draw the conclusion that when Mr. Koessler says there is competition, he means there is competition among the syndicates, King, NEA, for the newspapers business, but as far as competition among printers, Mr. Koessler as a
2302 printer no longer has competition with International for printing King's business, he's got it.

The COURT: Has he killed somebody off——

Mr. BERNSTEIN: Yes.

The COURT: ——or has he done better?

Mr. BERNSTEIN: He killed——

The COURT: Who?

Mr. BERNSTEIN: Killed off the business that was otherwise available to World Color Press or Acme or some other printer that Hearst and King would have had to get in there——

The COURT: Are they dead?

Mr. BERNSTEIN: They are not dead, they are doing commercial work, circulars.

The COURT: This is a specialty game. You may think I am being silly when I talk about the years that I was interested in the comics, but comics were ridiculous, they came out in a jargon of color, and if you were interested in the Katzen-
2303 jammer Kids or Barney Google, or whatever you wish, it didn't look quite right with blue gloves and a red nose.

Once in a while I look again, and it has changed, I know something happened. Now, if somebody can make an image, for those who wish to read it, that is palatable, without having blue gloves and overprinting, I suppose it is important.

Mr. BERNSTEIN: He shouldn't be stopped.

The COURT: Are these people dead because somebody devised—I have a notion, maybe I'm wrong, that out of this early \$1,000 beginning a process began that has swept the country. That is not unique with me, I mentioned the Wilson brothers down here locally, who by their basic genius were outstanding people with Ford, people who had very humble beginnings, and wound up as K. R. Wilson in this town, I don't
believe with any formal education, very wealthy men. I

2304 take it Mr. Koessler is a wealthy man. I assume he is.

He is a man of substance in the money field, let's say that. I am trying to find out whether this was progress, Mr. Bernstein, or whether, despite all this letter writing that I have seen, it is a scheme. What did he have to sell the field unless he had something out of that \$1,000 beginning with Charlie Frieberg and himself. They had about \$5,000 in that pot originally. How did it happen? You can't outscheme Hearst with \$5,000.

Mr. BERNSTEIN: He did.

The COURT: All right.

Mr. BERNSTEIN: The evil of this is, your Honor, it is both progress and it is also a scheme. The evil of it is this; neither Hearst nor—let's say Hearst—

The COURT: Look, I have been in San Simeon, I know what the Hearst dynasty was. You mean Mr. Koessler in 1926
2305 outscheme Hearst with \$5,000, \$1,000 of which was Charlie Frieberg's?

Mr. BERNSTEIN: I mean he did it in 1955, and he did it very well. Here is why, if you will permit me—

The COURT: I knew Charlie Frieberg a bit. I knew Charlie Frieberg as a young man, he was a respective sheriff here. He apparently had a few thousand dollars, and he put \$1,000 in this. You know, I was admitted in 1933 in the depths of the depression, and the best job for a young lawyer, unless your father was wealthy, was with the banks. I was with the Buffalo Savings Bank. There were two journals in this town, one the International Gazette, and the only man I knew was Cliff Bush who used to hang around the County Hall, and the other was the Buffalo Daily Law Journal, with a fellow named O'Mara.

They were hotly competitive. I had that choice, I could
2306 publish that foreclosure notice in either the Buffalo

Daily Law Journal or the International Gazette and meet the Civil Practice Act, and if there was ever competition, mark you, it was then, and at that time I didn't know Mr. Koessler, never heard of Mr. Koessler, but that was the International Gazette, it was a throwaway out in Black Rock. I used to live in Cold Springs before it changed, there was some other paper, I don't know what Mr. Koessler said, but I know this background. What did Mr. Koessler say he was originally, a toolmaker?

Mr. BERNSTEIN: He was a reporter, his father was a toolmaker.

The COURT: Well now, what I am trying to say to you, I have been in San Simeon, I know a little bit about Hearst. You say that out of \$5,000 suddenly Mr. Koessler, without being unique, because competitive with the Hearst dynasty?

2307 Mr. BERNSTEIN: Yes, because in 1955 Mr. Koessler had a unique talent to sell and he was going it—

The COURT: Sell?

Mr. BERNSTEIN: Yes.

The COURT: You mean because he speaks so definitely and

frankly? What do you mean Koessler's unique ability to sell? Do you mean he had a tool behind him, like a blackjack?

Mr. BERNSTEIN: No, no, he had a superb talent of printing quality color comic supplements, taking old abandoned—

The COURT: That is what I am saying. Did he have a better mousetrap?

Mr. BERNSTEIN: He had a better mousetrap, and here is what happened, he was pitted with that better mousetrap against Hearst, through King and Nicht, who had no printing to sell—

The COURT: And no mousetrap.

Mr. BERNSTEIN: And no mousetrap, and they were making profit on International's printing, and at that period of
2308 time Hearst was milking International, keeping them in a low condition, and Hearst had to do something, and Koessler knew Hearst had to do something. So when Hearst came to Koessler and said, 'Let's join forces, I'll be the sales agent, you be the printer', Koessler led him on, led him to believe that was going to happen.

The COURT: I don't have any impression that in this printing game or this newspaper game that it is nice to be a mourning dove, sitting there quietly carrying on your quiet song. I think this is a rough field, as indeed I think sometimes the law business is. I have no idea that everyone is a nice man. I am trying to figure out whether you have a case against these
2309 people. If we have the environment where we are all saints and some saint went wrong, we would punish the saint. If we are not all saints, you have to watch your back once in a while, don't you?

Mr. BERNSTEIN: Yes, sir.

The COURT: Now, the question with me, Mr. Bernstein, and I have great respect for you, is whether or not in this particular case we are supposed to take a standard of the mourning dove looking quietly in all directions without watching out back, or are we taking a standard of this, a highly competitive game wherein each one has to be watchful, and maybe there were attempts—this man said, "Look, I had a lawyer, several lawyers, they asked me to reject one and go somewhere else, and I found he would not write it", and so forth. I am trying to do the best I can in this jungle. Now, you see, somebody wins finally and somebody loses in this business. He has won, he is

an immense printing success. Nobody has been eaten,
 2310 I haven't heard about anybody being eaten; east, west,
 south and north. As you know, they had to divide in
 other directions, perhaps, but nobody has been eaten up here.

Mr. BERNSTEIN: Yes, the public has been eaten by what Mr. Koessler describes as the power of Hearst and the other syndicates to tie in the features. When the Government——

The COURT: Do you think that because it is a quarter now in my town for a Sunday paper and I guess about eight cents for the daily newspaper, that somebody has been eaten up due to Mr. Koessler?

Mr. BERNSTEIN: Mr. Koessler complains about being at the mercy of a syndicate that has the power to tie features in. The Government's position is that in this jungle, where you have this fierce competition, if both sides are wrong, what the Court
 2311 has to do now, twelve years later, is neutralize it, put them in a position where the syndicate can't have the power over the tie-ins.

The COURT: What do you want me to do, divest them of that Wilkes-Barre plant?

Mr. BERNSTEIN: I would like the Court, in a transition period within a prescribed time of let us say a year, to announce to King and NEA that Greater Buffalo will no longer print for you as syndicates, you don't do any printing, you have no printing to sell, you just sell features, and you make your election, if you want to be a printer, buy Sylacauga, buy Lufkin, give me back my investment because the Court is going to make me sell it, and then I will pit my ingenuity and talent, my ability to take machines and repair them against your printing ability, and if you don't want to print, all you do is sell features and don't tie them in because that is against the law.

The COURT: Do you think the Buffalo Courier-Express would be less than twenty-five cents an issue on
 2312 Sunday because of that?

Mr. BERNSTEIN: No, the Buffalo Courier-Express or any other paper will not be at the mercy of somebody who is not in the printing business.

The COURT: Twenty-five cents for a newspaper, eight cents, I guess, for a daily, maybe it is ten, I never buy it on the street; do you mean that is an unnatural progression of price when you think about how it started out? I don't remember, it used to be a nickel, it was fifteen cents for the Sunday sheet, a nickel

for the daily, I'm talking about in the thirties, and now it's eight cents and a quarter. Who is being killed?

Mr. BERNSTEIN: The public, the buying public of the newspaper isn't being killed, the newspapers itself is part of the buying public in that the newspaper——

The COURT: I haven't heard any interveners here that are being flushed down the drain due to excessive printing
2313 prices.

Mr. BERNSTEIN: If they made application to intervene the Government would object on the grounds that it is the Government's duty to protect the newspapers, and represent their interests.

The COURT: I think my image is this; if they made a motion to intervene here as friends of the Court, they would be here today, regardless of your belief on whether it is the Government's duty to protect them or not. This isn't a criminal action.

Mr. BERNSTEIN: That is the point, your Honor.

The COURT: I am trying to beat this thing into some focus wherein I can decide it, and you may feel that you have been hit upon hard——

Mr. BERNSTEIN: No, your Honor.

The COURT: I have to decide this fairly. I don't pre-judge it but I can't get away from my impression that this is the man who started out on a shoestring and suddenly he is
2314 the fellow that is knocking Hearst off his horse. Gentlemen, look, that is not in the nature of things, and I am not talking about Marion Davies, either. Go ahead.

By Mr. BERNSTEIN:

Q. Inviting your attention to——

A. Mr. Bernstein, in Sioux City, I think you were trying to make the point——

Q. Excuse me, Mr. Koessler, I am trying to examine you about P-99, and if we move along, Mr. Raichle will have the opportunity to bring out any features that you would like to have brought out. P-99 for identification, note the first paragraph, do you recall whether or not on or about December 9, 1955, you were in Mr. Nicht's office?

A. I couldn't say.

Q. Well, your personal contact with him was somewhat infrequent?

A. Yes.

Q. Do you recall how many times you were in his office after you bought International?

A. My recollection is that I was never in his office more than three or four times.

2315 Q. Do you recall his ever reading a memorandum to you on the occasion of being in his office?

A. I don't remember him reading anything to me.

Q. Now, do you recall whether or not after International Color Press stock was purchased Mr. Nicht said to you that he would like to look upon Greater Buffalo Press in the same light that he looked upon his relationship with International Color for more than thirty years?

A. I don't recall him saying that, but I hope that will never come to pass.

Q. You don't recall that conversation on December 9th?

A. No.

Q. Do you recall whether or not about that time he submitted a draft of a contract to his lawyers?

A. I know that they kept needling me constantly after Mr. Raichle told them this thing wasn't legal, they started right off working up some new scheme.

Q. Do you recall talking to him at about that time about the relationship with the Chicago Tribune, NEA and the Harte-Hanks deal? I invite your attention to the fourth paragraph in the memorandum, the first sentence?

A. No.

Q. You don't recall that. Do you recall any conversation with him about the meeting that he had with Mr. Walker
2316 in the Beverly Hotel after you had invited Mr. Walker to—excuse me—Mr. Nicht to meet with Mr. Walker at the Beverly?

A. No, never told me anything about that.

Q. Look at the next to last paragraph; do you recall having any conversation with him around December 9, 1955, about NEA, your printing for NEA, your purchase of Buffalo Color Press?

A. Well, not at that time, but prior he didn't want us to do any business with NEA.

Q. After the Beverly Hotel meeting what was the discussion with him?

A. He didn't like still doing business with NEA.

Q. Did he say anything about not trying to—did he say anything about a truce to you or—

A. No.

Q. Did he say anything about not trying to put King Features in NEA's papers around December, 1955?

A. No.

Q. Did he say anything to you after his meeting with Mr. Walker in the Beverly Hotel about not taking NEA's accounts, keeping their accounts and King keeping his own?

A. No.

Q. He didn't say anything along those lines?

2317 A. No.

Q. You don't recall?

A. No.

Mr. BERNSTEIN: I offer P-99 in evidence. It is the same kind of document—

Mr. RAICHLER: Objection.

Mr. STEVENS: Objection.

The COURT: Same ruling. That is Nicht's memorandum?

Mr. BERNSTEIN: Nicht's memorandum to himself.

The COURT: I am aware of what you said before about your reservations when we are all through. You consider these material to the mental operations of a co-conspirator, and I am not passing on that subject. I decline to receive these as any business entries of Nicht's company. I have my thoughts about whether or not they are pertinent to the alleged co-conspiracy. I will hear you eventually on that. But I thought I made it clear, I am sure I have, that, as a business entry, these
2318 notes I do not consider within the purview of the Federal rules on business entries. I sustain the object to them on that ground. I will hear all sides on the other point. NEA persistently says, "I object on the grounds it doesn't include me." Your conspiracy charges them as, at one time, at least, entering the conspiracy, and if you are right on this, then you claim that these are pertinent as to them—

Mr. BERNSTEIN: That is right.

The COURT:—on the conspiracy?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: May I take thirty seconds to remind your Honor that Nicht's memoranda fall in at least three categories. One category is memoranda Nicht makes to his superiors re-

porting upon what happened. Another kind of memorandum is one just shown here now, with the document heading 2319 memorandum, according to the testimony we have described it as a self-memorandum, a memorandum he writes to himself and keeps in his own office. The third kind of memorandum is a memorandum Nicht writes to himself in which he says what he is going to do, a reminder of things to take up with people. The three are in somewhat different categories.

The COURT: Be sure and separate them positively, because I think when I go home and say what I am going to do tomorrow, and if I say something about you and my intentions for tomorrow, and for some reason we became in controversy, I could hardly see how the sense of fairness or justice would permit that to be used against you if I wasn't around. Many of these rules have been kicking around for years in the courts, and the lawyers read all these decisions, but when you get down to it they are common sense, and the exceptions are 2320 because, in the nature of things, things are assumed to be true because of the circumstances under which they are made. Here is a fellow named Nicht that, at least in this court room, hasn't had any halo around him, making notes, what he is going to do, when he is going to get Koessler, NEA, or what have you. Doesn't it occur to you that this kind of proof is a little fuzzy, doubtful? I haven't looked up the cases on it, but separate those things into the class you claim they fall in and we will review them all.

Mr. BERNSTEIN: Very well.

The COURT: We will take a short recess.

(Thereupon the Court was in recess at 2:20 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 2:50 P.M.)

2321 By Mr. BERNSTEIN:

Q. Mr. Koessler, I show you P-44 for identification. P-44 is a memorandum dated March 30, 1954, to Eli Minton, of Dallas, signed H. W. W., and I represent that is Mr. Herbert W. Walker. I invite your attention to the fourth paragraph, and Mr. Walker says, in talking about Lufkin, Texas: "I first checked with Kenneth Koessler, since Walter, the head guy there, was in Florida at the time. It isn't necessary to go into any detailed report of the talks with Kenneth, other than to say that he reported that the Koesslers did not want to set up a

plant there, felt there was really not enough business to justify it, realized that this would simply increase the overhead for them, since their plants at Buffalo and Dunkirk could print everything in the southwest now without being hard pressed."

The COURT: The date, please?

Mr. BERNSTEIN: March 30, 1954.

By Mr. BERNSTEIN:

Q. Now, P-92 in evidence, Mr. Koessler, shows that on June 3, 1954, two months later, you said that you signed a commitment to purchase 15,000 ton of newsprint for Lufkin, 2322 Texas, when that plant would open. Now, I ask you, in March, 1954 were you having some discussion with your brother Kenneth concerning the advisability of opening the Lufkin plant?

A. Kenneth—Walker says Kenneth told him that he didn't think we were going to open a plant down there. I gather Kenneth was not telling Walker our plans, he didn't want him to know.

Q. You don't recall that at the moment, you are surmising that from the memorandum and from the fact that you actually did open the plant, you did go ahead? You don't have a present recollection of what Mr. Kenneth Koessler told him?

A. I wasn't there, I was in Florida.

Q. My question to you was, did you have a conversation with your brother Kenneth concerning the inadvisability of opening up the Lufkin plant?

A. No, I don't think Kenneth was ever against opening up the Lufkin plant. He wasn't going to tell Walker.

Q. Your testimony is clear, that as far as you and Kenneth were concerned, Kenneth never expressed any doubts to you about the advisability of going ahead with the Lufkin plant in March, 1954?

A. No.

Q. All right. Now, look at the fifth paragraph down. It says: "After Walter's return, I went to Buffalo to see him." 2323 Who is he referring to?

A. Me.

Q. "After Walter's return, I went to Buffalo to see him. Walter said they had not yet definitely decided to go ahead with the plant, but that may be more of a way of saying that everything has not been settled, because I believe they intend to go ahead." At that time did you intend to go ahead?

A. Yes.

Q. At that time did you tell Mr. Walker that you hadn't definitely decided to go ahead with the plant?

A. I could have. I don't recall.

Q. That was—well, from the fact that—if you had told him that, from the fact that on June 3rd you first—

A. I didn't want him to know we had definite plans, if that is what you mean.

Q. Turn to page two, and in the second full paragraph that begins with the words, "The price of paper", the seventh line down, the sentence there that begins: "The Koesslers now have the three runs at Dallas, Houston and San Antonio, and Walter said they needed a lot more work than that to justify the southwest plant." Did you then have the three runs, Dallas, Houston and San Antonio?

2324 A. Yes.

Q. Did you tell that to Walker?

A. He knew it. I don't recall I told him, he knew it.

Q. And do you recall whether you told him that you needed a lot more work than that to justify the southwest plant?

A. No.

Q. You don't recall it?

A. No. That isn't the way things work, you go down and take your chances and—

Q. Read the last sentence in that paragraph—

The COURT: Wait a minute. Take your chances alone or with your skill?

The WITNESS: With your money, your hope to make a paying proposition out of it. Nobody is going to insure they are going to give you their business or you are going to make money. You put your money in and take a chance like anybody else going in business.

The COURT: I go back to my premise, you think you have something to sell?

The WITNESS: Indeed.

The COURT: I don't want to put answers in your
2325 mouth, but isn't that what you always persisted, that you had something to sell?

The WITNESS: Indeed we thought we would sell those newspapers down there if we located the plant. In 1954 the only business we actually had that was in Texas or in the southwest area were the jobs we were then printing up in Dunkirk or in

Buffalo. They were printed up here, these people were paying the freight on them down in Texas.

The COURT: All right.

By Mr. BERNSTEIN:

Q. Now, I invite—

The COURT: Mr. Bernstein, I must make it quite clear that you must persuade me there was no unique ability here, that this is another plant, a scheming plant with money. You have to persuade me and I only alert you, that this man had something to sell. You say, "Of course he did, but he wanted to gather it all." That is a side issue with me—not a side issue at all, it is an important consideration, but you see, I still believe in Fulton and the steamboat. I think Fulton was entitled—I don't think he got many rewards, but—do you see what I am driving at? Maybe I am a boy in the woods myself.

Mr. BERNSTEIN: I appreciate the Court's giving us the benefit of his views at this time. All I can say is that I hope to persuade the Court.

The COURT: I don't care about money, basically, but I wish I could think of something original, I would take pride in it, whether it was a better price, a better anything, or running a better court. Go ahead.

By Mr. BERNSTEIN:

Q. P-44, Mr. Koessler, page two, in the second full paragraph, next to the last sentence, it reads: "Other runs which Walter said he ought to have in order to come out were Oklahoma City, which also has a newly rebuilt press, Tulsa, Little Rock, Memphis, New Orleans, and Houston. He professed not to be interested in smaller runs. We have never found the Koessler's competitive with King on the smaller runs, and if they cling to their ideas as to makeready costs, et cetera, they never would come up with a good price on the Pappert run. They really prefer not to handle this smaller stuff." Mr. Koessler, do you recall whether you said to Mr. Walker about this time that you did have the Oklahoma City—that you needed the Oklahoma City run, Tulsa, Little Rock, Memphis, New Orleans and Houston in order to come out in the Lufkin plant?

A. No. I told him—that is, I could have told him, I don't recall all this conversation, I could have told him we were look-

ing, these were possible runs for us to get and runs we sure were going to try to get, runs that should belong down in that plant in Lufkin. Three of them—there are six mentioned here—could we talk some more about the runs mentioned here?

Q. Do you recall whether you said to him that you were not interested in the smaller runs?

A. Ordinarily, we were not.

Q. Is your answer that you were not ordinarily
2328 interested?

A. We are not interested in a job in which we don't have a makeready.

Q. You are using the present tense, and I am talking about March 30, 1954. It was the same then? At that time you were not generally interested in the smaller runs, is that correct?

A. Runs that some of these syndicates had because we couldn't compete with them, they had the makeready, the features, we didn't.

Q. And were you discussing that with Mr. Walker?

A. I could have been.

Q. For what purpose?

A. Well, if he was curious to know what our plans were down in Lufkin, I was telling him that these are jobs that somewhere along the line we have got to get or should get to make the thing come out right. Incidentally, one of them, Little Rock, is one of the ones we didn't get, and the reason we didn't is your injunction, Mr. Bernstein, keeps the job up in International Color Printing Company in Wilkes-Barre.

Q. Who is printing that?

A. International—King Features holds the account.

Q. International does the printing and gets the revenue from the printing?

A. Yes.

2329 Q. Greater Buffalo Press gets the revenue from International?

A. But the newspaper pays the freight from Wilkes-Barre to Little Rock.

Q. Insofar as J. Walter Koessler is concerned, he was not losing any money on that transaction?

A. No, but you were telling the Judge what you are interested in was the public, that the newspapers were the ones going to suffer. Here is a case where the newspaper is suffering on account of your injunction.

Q. That is correct. I don't want to debate the point with you, I will do that in the hall later. But the fact of the matter is that on March——

The COURT: Wait a minute. Let me ask you; no one is going broke, I trust?

The WITNESS: We are not complaining a bit.

The COURT: Nobody else is, right?

The WITNESS: No.

The COURT: You know, in the nature of things——

The WITNESS: Except Mr. Bernstein.

The COURT: —sometimes the Court has to grant injunctions largely because of an alleged abuse, and the Court has to
2330 evaluate that. When it goes on for years, you get disturbed about it, this is going on for years. I put a crimp in you in Sylacauga, until I found, about six months later, that I felt somebody was taking advantage of that crimp, and we had a hearing, do you remember?

The WITNESS: That is right.

The COURT: I tried to relieve that. I will not use my injunctive powers to benefit somebody else. I cannot say I was right even then. In other words, these injunctive things, Mr. Koesler, and Mr. Bernstein knows this, are stop-gaps while we try to figure out what is right. We are short-handed. We come on, we do the best we can. People think why is it so long? We are short-handed, which I cannot control nor thee. Do you see?

The WITNESS: Judge, we are not complaining at all.

The COURT: You say that this is a bum situation in your view. It may be, I don't know, but you do the best you can.

The WITNESS: Indeed. No fault of yours.

2331 The COURT: Do you see?

The WITNESS: King Features went to the Justice Department and asked them for relief, and they have refused to give it.

The COURT: You do the best you can. You say things that alert me. After all I am the fellow that has to decide these things, temporary injunctions and everything else. I guess I have a touchy point. One a year ago the Court did something and, look, somebody didn't like it. Basically, at least in my court, I try to do the best I can. I mean what I am driving at, you can't do it all.

The WITNESS: Indeed you can't.

Mr. BERNSTEIN: And, if the Court please, there have been

applications to move runs, take them out of the injunction that the Court granted, on the consent of the Department of Justice, and the Department of Justice is willing to entertain
 2332 any applications for any individual run presented to the Court, join with it until we can come to grips with the problem.

The COURT: The only thing the Court, being a one man Court is sensitive about, is any question of whether it is sleeping, resting on its laurels. I am sensitive about that. I am sure it is not quite true. Go ahead.

The WITNESS: We are not hurt at all. Mr. Bernstein is talking about the position of the newspapers and this is something that is hurting them and not us. Nobody is complaining, actually.

The COURT: I think you have a right to complain. That is the end of it. But this Court does the best it can.

The WITNESS: Indeed it does.

By Mr. BERNSTEIN:

Q. P-46 in evidence, Mr. Koessler, is a memorandum from Mr. Walker to Eli Minton in Dallas, dated May 17, 1954, and in that, in the first four paragraphs, if you will read that to yourself, please?

2333 A. The first four paragraphs?

Q. Yes.

A. Yes. Go ahead.

Q. Mr. Walker talks about a party at the Stork Club in which you were telling everybody that you were going ahead with the southwest operation. Do you recall what he was referring to?

A. No.

Q. And Mr. Walker talks about—he said some weeks ago he told you about a \$12.00 discount on paper.

A. I don't remember that. There was no such thing. I know there wasn't any such thing as that.

Q. On June 3, 1954, this is less than a month later, you signed a commitment to purchase 15,000 tons for the Lufkin plant?

A. Yes.

Q. Mr. Walker is saying, on May 17th, to Mr. Minton, his representative in Dallas, that he had spoken with you some weeks ago, you were talking with him about your purchase of paper for the Lufkin mill. What I am trying to find out, do you recall having such a conversation or conversations of that nature with Mr. Walker?

A. No.

Q. You don't recall?

2334 A. No. I don't recall any \$12.00 a ton discount on paper either.

Q. All right. Do you recall talking to Mr. Walker about Lufkin and your plan to open that plant in and around May of 1954, and this is before you signed a contract to purchase the paper?

A. Mr. Walker did talk to me about it, yes.

Mr. BERNSTEIN: Would you read the last answer back? (Thereupon the last answer was read by reporter.)

By Mr. BERNSTEIN:

Q. I show you P-32 in evidence, Mr. Koessler, that is your letter to Mr. Anderson, dated December 5, 1956, and this is after you purchased the Buffalo Color Press. You say, "Dear Earl: We have a man, Fred Jerauld by name, who is working out of Lufkin on the larger southwest accounts, and Albuquerque, New Mexico is one of these." Was Jerauld an employee of the Greater Buffalo Press, Inc.?

A. Yes.

The COURT: Mr. Bernstein, I didn't quite get your resume. We have heard a lot of proof here. Do you think there is an area of a consent decree that could possibly be worked

2335 out between yourself, Mr. Koessler, NEA, Mr. Raichle,

Mr. Moore and your colleague, that might sanctify, in the light of things now; after all, we are presented with things now, do you think there could be any value at all, rather than going on forevermore, do you think there is any reason or value to you trying to resolve anything in this present field of journalism that you can agree upon? I never asked you before. The ideal time is in chambers, where there is a little give, a little take. There is something here that might not—your concern, Mr. Bernstein, is that the public doesn't pay more for its product on the street?

Mr. BERNSTEIN: And the freedom of the newspaper to purchase where they will without being victimized by any syndicate tie-ins and with syndicates free to get printing done wherever they wish without anybody monopolizing the printing

2336 facilities. Those three areas are the Government's concern.

The COURT: If you were to agree to that, forgive the past, whatever you think the past was; Koessler now is a giant in the

printing game, he is running a top show. You don't want him to—

Mr. BERNSTEIN: I want a fair fight.

The COURT: Wait a minute, I know that. You want to define the future, right?

Mr. BERNSTEIN: Yes, sir.

The COURT: Don't you think there might be some merit in talking about this?

Mr. BERNSTEIN: I think there are merits. I think we will make every effort to do that. As a matter of fact, I mentioned this to Mr. Raichle yesterday.

The COURT: You didn't mention it to me.

Mr. BERNSTEIN: I mentioned it to Mr. Raichle. I took the initiative yesterday to do it. I really believe, your Honor,
2337 we will not be able to come to grips with this, none of the diverse views would be able to reach a compromise, maintaining their position, until we have the facts in the record.

The COURT: You lean toward the fact that you think there might be an area of settlement in this case?

Mr. BERNSTEIN: I do, your Honor. I do it not because the Court suggested it, although I deeply respect the Court's suggestion, but I do it because I feel it is my duty to make every effort to settle any part of a litigation if the settlement that can come out will be a fair one to all parties concerned, and it can't be fair, from the Government's standpoint or the public's unless we have the opportunity to persuade Mr. Koessler and his counsel, and NEA and their counsel, that this apparently has merit. If we are in the position where they say that didn't happen—

The COURT: What do you want; do you want a strip
2338 of hide or do you want conformance?

Mr. BERNSTEIN: I want fairness.

The COURT: Do you want a strip of hide or do you want conformance? I am talking to you, Mr. Bernstein. Do you want a strip of hide—

Mr. BERNSTEIN: I want nobody's hide.

The COURT: Or do you want conformance to what you think is reasonable?

Mr. BERNSTEIN: Yes, conformance to what the consensus of reasonableness would be among the counsel for the parties.

I will make every effort to do that when the evidence is in the record.

The COURT: Proceed.

By Mr. BERNSTEIN:

Q. P-32, Mr. Koessler, you say to Mr. Anderson that one of your representatives who is working out of Lufkin on the larger southwest accounts. You tell him: "We have to get these larger papers on our own to keep the general overall price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve." What 2339 did you mean by that?

A. I meant we didn't think we could—Scripps-Howard has a paper—we are talking about Albuquerque?

Q. Yes.

A. There is two papers in Albuquerque. One is the Albuquerque Journal and there is another paper in Albuquerque. I don't know the name of it, it is owned by Scripps-Howard. We told them we were going to solicit the business of the Albuquerque Journal but, as far as the Scripps-Howard paper is concerned, they were to have a comic section, we realized that is something outside of our preserve, we could not get it, they would not give it to us. If they were going to give it to anybody they would give it to their relations, and their relations were NEA.

Q. Is that what you meant when you said: "The Scripps paper, of course, is yours if you can sell them a comic section."?

A. That is right.

Q. You say: "It is my understanding that the Albuquerque Journal is not a Scripps paper." When you say: "We wish to keep as our private preserve.", you were talking that a paper like the Albuquerque Journal is one that you would like?

A. Any private newspaper that wasn't owned by 2340 Hearst or Scripps-Howard that we knew we didn't stand a chance of getting, we were not going to try.

Q. You were going to permit NEA to get it, if it could?

A. Not permit it.

Q. They would try?

A. Common sense would dictate that Scripps-Howard would give it to NEA if NEA solicited it.

Q. If NEA got that account and had it printed at the

Greater Buffalo Press, NEA would get a commission on it from the Greater Buffalo Press?

A. They would indeed.

Q. They would indeed, is that correct?

A. Yes. At this time can we have a discussion about——

Q. I would rather not.

A. I am sorry.

Q. I'll be through. I want to get done by four-thirty, so we can meet the deadline, and I will be through. On D-1 in evidence that Mr. Raichle asked you about on your direct examination, I invite your attention to the figures on the top portion which refer to the circulation of five newspapers; the Dallas News, the Houston Chronicle, the Kansas City Star, the San Antonio Express and the St. Louis Globe-Democrat; and I ask you if you recall in or about January 10, 1958, what type of sections the Dallas News was printing? Was it a
2341 twelve-page standard?

A. I couldn't tell you.

Q. I show you a piece of paper and ask you if you can—if that refreshes your recollection?

A. Yes.

Q. Was it a twelve-page standard?

A. Yes.

Q. And the Houston Chronicle, can you tell us whether or not that was a ten-page standard?

A. That is what it says there, those are our records, I think.

Q. The Kansas City Star, was that a ten-page standard?

A. Yes, that particular week. This is a certain week.

Q. January 10, 1958, is that correct?

A. Yes.

Q. Do I have in my hand what is known to you as a run sheet?

A. I think you could call it that.

Q. That lists the type of sections that the various newspapers, being printed by Greater Buffalo, was printing, is that correct?

A. For that date.

Q. For that date, yes. Now, as of January 10, 1958, was the San Antonio Express then printing a ten-page standard?

2342 A. Yes.

Q. Was the St. Louis Globe-Democrat printing a twelve-page standard?

A. Yes.

Q. And as of January 10, 1958, if you were trying to compute the runs, the production, in terms of four-page sections for the Dallas News, which was then printing a twelve-page standard, would you multiply the circulation 250,000 by 3?

A. This refers just to circulation, it doesn't refer to the number of pages.

Q. Right. If you are trying to find out the type of production, that is, the quantity of production, in terms of four-page sections, would you multiply the circulation by three if it was printing a twelve-page standard?

A. As of that date.

Q. Yes. That is the method that you would use, is that correct?

A. If you wanted to determine the volume of sections turned out that week, that is the way you would do it. The purpose of this statement was merely to give the relative amount of printing that the Greater Buffalo Press owned in the Lufkin plant.

Q. I understand.

2343 The COURT: Let me ask you something. I was sitting here thinking. Do you remember when I removed the injunction on the Sylacauga plant, basically because I thought flatly somebody was taking what I thought an unconscionable advantage, this fellow Hornady, putting out flier copies of my edict. Do you disagree with that?

Mr. BERNSTEIN: I did, yes, your Honor. I did because—

Th COURT: Isn't it true because—well, maybe you think he is entitled to put out copies of my order to every press in the country because I enjoined his competitor. Do you think that was proper?

Mr. BERNSTEIN: At the time—

The COURT: Maybe Walter Koessler made inopportune moves in his life and pressed hard, but didn't you think he pressed hard, that fellow down there, Hornady? I ask you frankly.

Mr. BERNSTEIN: I frankly, your Honor—

2344 The COURT: Don't you think he pressed hard? He thought he had a windfall.

Mr. BERNSTEIN: Frankly, your Honor, honestly, I'm not familiar with the facts as of that time. I was not—

The COURT: You are familiar with the fact I relieved my limitation. Did you agree with it?

Mr. BERNSTEIN: I did not. We were considering an appeal, and it was based upon the agreement of the Government not to appeal from your Honor's decision that counsel and the Government entered into a modification of the order.

The COURT: In this jungle somebody who has an advantage in the newspaper field suddenly gets hit with a whack, and what does the other part of the jungle do, run with it. I mean that isn't normal. Do you spread all over the creative image of journalism that Walter Koessler is out of business in this area,

let me hunger for you? Wait a minute, let's be fair.

2345 Am I unfair to you?

Mr. BERNSTEIN: I honestly believe, your Honor, that the past is prologue.

The COURT: You say the past is prologue. I am living today. I am wondering, you know, things happen, this war in Israel and the Arabs, we get an image of it today, but I will bet you in a year we will have a different image and somebody is going to be right. Somebody wants the Israelis to give up six miles that they have grabbed, the Arabs do, and the Israelis say negative. Look, it's not much different in business, seriously. You may say you get a different connotation, that is war. Look, this stuff is war, as I see it. You got something to sell, you got a printing plant that can go, you got top fellows in the ranks, like top lawyers, some top lawyers do it all, others go along,

it's the same thing. Now, I know you are interested in
2346 the public. You have to think about this thing. Someday there is going to be a judgment made on Israel and Arabia, and you can bet your last hat that I don't think Israel is going to hold it all or we will have trouble. Now, that is what I was talking about. These printers, this man prints a better paper, you say that. Somebody writes a better article, his stuff is more interesting than mine. Bishop Sheen's stuff is better than Bishop Duffy's, let's say, and somebody gets prominent, that is the way the world bounces. You see, Mr. Bernstein, if Mr. Koessler had no skill, if he was the same as everyone else and he just went out to murder everybody through phony deals, I would be your man. You got to come over that hill with me,

that he did not start out with \$1,000 with his brother
2347 and Charlie Frieberg and by dint of effort haul Hearst off his horse. Do you see? That is a long road on a high

hill.

By Mr. BERNSTEIN:

Q. I show you P-25 in evidence, Mr. Koessler. P-25 is a letter to you from Mr. Nicht, dated August 17, 1955. He says on the last page, the last paragraph of that page: "I had what I think——"

The COURT: Excuse me. I wouldn't be the first to tell you that because of his skill, opportunity sought him out, but you've got to have an agreement. He may have had to make tribute here on his road, but tribute is not an agreement. In other words, what I am trying to say is this. Somebody may have set upon him and made demands, he may have acceded that is not a conspiracy, you know that?

Mr. BERNSTEIN: Yes, your Honor. I am going into this phase, as far as Eastern Color, Mr. Koessler's printing competitor.

2348 The COURT: All right.

Mr. BERNSTEIN: Eastern Color has been charged as being a co-conspirator with Greater Buffalo in this case. We are going into that area now.

The COURT: You may be discouraged by my remarks. I don't want to discourage you.

Mr. BERNSTEIN: I respect the Court too much to——

The COURT: I am telling you that I am viewing things with a hard eye.

Mr. BERNSTEIN: I accept the burden that I have. I will proceed.

By Mr. BERNSTEIN:

Q. I invite your attention to the last paragraph on the first page of P-25, in which Mr. Nicht says to you: "I had what I think is another worthwhile talk regarding Eastern." Eastern was your competitor at that time, is that correct?

A. My—our competitor, sure.

Q. Mr. Nicht said: "As things look now, maybe I'll be able to work things out." As of August 17, 1955—strike that out. "It may involve Portland, Maine, and New Bedford and in the process we might get Greensboro. I'm not sure, but
2349 I'm hopeful. In this connection, what are your thoughts about the Boston Post? If all of this can be worked out, our friends would be able to obtain increases on their present work which they are sorely in need of." Was he talking about Eastern when he said "our friends"?

A. Well——

Q. Just yes or no, was he talking about Eastern?

A. I don't know.

The COURT: Wait a minute, now. If you asked me if I was talking about friends under similar circumstances, I think I would hesitate. Do you want to hesitate?

The WITNESS: Yes.

Mr. BERNSTEIN: I will withdraw the question.

By Mr. BERNSTEIN:

Q. "Our friends would be able to obtain increases on their present work which they are sorely in need of." Look at your response to Mr. Nicht, dated August 22, 1955, which is P-26 in evidence. You say in the fourth paragraph: "On the Eastern matter your proposed plan is okay with me if it is agreeable with Joe Gorman." Was it agreeable with Joe Gorman?

A. No.

2350 Q. Did you discuss it with Mr. Gorman?

A. Yes.

Q. What did you tell him?

A. Well, let's go over what the proposal was first. Let's get that straightened out. In other words, Nicht was going to take some of the business that he had in Wilkes-Barre and give it to Eastern Color. Also, at the same time, he was suggesting to us, Greater Buffalo, that we give up the printing of the Boston Post, which was our own account, which we were not going to give up. It was a lot of nonsense.

Q. Your letter to him, to Mr. Nicht, was: "On the Eastern matter your proposed plan is okay with me if it is agreeable with Joe Gorman."?

A. It wasn't agreeable with Gorman.

Q. You told Nicht it was okay with you, didn't you?

A. That is always what you had to tell Nicht.

Q. You were trying to lead him on?

A. No. Anyway, he didn't give it to Eastern.

Q. Right.

A. We didn't give the Boston Post to Eastern either.

The COURT: Let me ask you; may I hope that I will hear from Mr. Gorman some time?

The WITNESS: Yes.

Mr. RAICHLE: He is our next witness, your Honor.

2351 The COURT: Let's not beat that into the ground. I shall listen to him.

Mr. BERNSTEIN: I will be through in—

The COURT: Are you through with this witness?

Mr. BERNSTEIN: I beg your pardon, your Honor, I am sorry.

The COURT: When are you going to be through?

Mr. BERNSTEIN: I have four more documents with this witness and I will be through with him.

The COURT: Finish him up. I suppose there will be some redirect.

Mr. RAICHLE: The redirect will be less than five minutes.

Mr. STEVENS: A very short cross-examination by NEA also, your Honor.

The COURT: I expected none from you. I haven't heard your name, except casually.

By Mr. BERNSTEIN:

Q. P-67 for identification is a memorandum from Mr. Nicht to himself, dated August 4, 1955, about the time—two weeks before his letter to you dated August 17th concerning the Eastern matter. He says—look at the first paragraph, do you
2352 recall having a luncheon session with him at which Mr. Lalor was present?

A. No.

Q. And do you recall whether or not he told you about his recent visit with Bill Pape and Ham Moore?

A. No.

Q. Who are Bill Pape and Ham Moore?

A. Bill Pape is the owner of Eastern Color, part of the family that owned Eastern Color Printing Company. Ham Moore was a salesman for them.

Mr. BERNSTEIN: I offer P-67 in evidence on the same basis.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

The COURT: Let me see it.

Mr. RAICHLE: It isn't a letter. It is one of Nicht's memoranda.

Mr. FELDMAN: Yes.

The COURT: Same ruling.

By Mr. BERNSTEIN:

Q. P-68 for identification, another memorandum of Mr. Nicht's to himself, dated August 17, 1955, and I ask you to look at the first four paragraphs, read them to yourself.

A. This is something that doesn't involve us at all.

2353 Q. My question is, do you recall whether or not about that time you had a conversation with Mr. Nicht in

which he told you that he had met with Ham Moore of Eastern Color Printing Company, and that they liked the idea of King giving them Portland and New Bedford and Eastern to turn over Greensboro, North Carolina to King? Do you recall having such a conversation, yes or no?

A. No. They never did.

Mr. BERNSTEIN: I offer P-68 in evidence.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

The COURT: It's a Nicht memorandum?

Mr. BERNSTEIN: Another memorandum from Mr. Nicht to himself.

The COURT: The same ruling.

Mr. BERNSTEIN: P-66 for identification, your Honor, is another category of memorandum. This is a memorandum from Mr. Nicht to Mr. Ward Greene, dated November 4, 1955, concerning the Eastern situation.

The COURT: Who is Greene?

Mr. BERNSTEIN: He is Mr. Nicht's superior in the Hearst organization.

2354 The COURT: Do you think that is a business entry?

Mr. BERNSTEIN: This is a different category. This is a formal report of Mr. Nicht to Mr. Greene. I will offer it at this time and request your Honor to reserve ruling so I can argue it in extenso later on.

The COURT: Yes.

Mr. BERNSTEIN: Would you mark document 252 for identification?

(Thereupon memorandum referred to was marked Plaintiff's exhibit P-101 for identification.)

Mr. BERNSTEIN: P-101, your Honor, is another memorandum from Mr. Nicht to himself. I offer it in evidence with the—

The COURT: Same ruling.

Mr. BERNSTEIN: The Government has no further questions of this witness.

The COURT: Now, you may step down. There will be some redirect in the morning. Now, I am trying to get this
2355 case in grips. Now, Mr. Bernstein, what are you contemplating, tomorrow is Friday?

Mr. BERNSTEIN: I would hope, if your Honor finds it possible, to start earlier tomorrow. I would hope we could be

through with the evidence tomorrow. The witnesses remaining are redirect on Mr. Koessler; and I understand Mr. Raichle is going to call Mr. Gorman, there will be cross-examination of Mr. Gorman—I think there will be cross-examination of Mr. Koessler by NEA to some degree—then Mr. Gorman, then the next witness is Mr. Anderson of NEA. I believe that if the Court's schedule permits, if the Court is willing, if we could start early in the morning, I am confident we could be through tomorrow and then I think we would be in a position to discuss settlement of this case with counsel, we would at least
 2356 discuss it, we will initiate discussions. I would ask the Court to schedule a half day for getting the evidence of the tie-ins against NEA at the earliest possible time, as soon as possible, for a half day.

The COURT: Driscoll, who is he? Have I his deposition?

Mr. BERNSTEIN: No.

The COURT: Where is he?

Mr. BERNSTEIN: He is available, I am sure.

The COURT: He is Nicht's satellite, isn't he?

Mr. BERNSTEIN: No, your Honor. Mr. Rogers is Mr. Nicht's successor.

The COURT: Look, you have an exhibit here, P-73 for identification. Do you know the letter I am talking about?

Mr. BERNSTEIN: Isn't that the letter in which he says how much he is paying him?

The COURT: Look, Nicht is dead, he is gone. His satellite, Driscoll, who apparently he sent on forays, has news to tell you. Do you choose not to call him?

Mr. BERNSTEIN: No, we will call him.

Mr. BERNSTEIN: No, we will call him.

2357 The COURT: I point out that I consider the whole story of Nicht and Koessler, his machinations and under the cover operations as subject to interpretation.

Mr. BERNSTEIN: No question about it.

The COURT: This fellow Driscoll, he was Nicht's boy. I mean I assume he was. Well, all right. Everyone calls the witnesses he wishes to call. Only the Court questions why others aren't called, but the Court also can make inferences because they are not called. Am I too cruel?

Mr. BERNSTEIN: No, sir. I will run that risk. That is the risk I run in making the decision as to how long I want to prolong the record and whether we have sufficient in the record

to be able to take the bits and pieces and put it together for your Honor at another time.

The COURT: I would like to hear certain people; Driscoll—Hornady—came up here? That is the Southern Colonel
2358 sort? Maybe I am characterizing him unduly. He was up here?

Mr. BERNSTEIN: Did he testify orally?

Mr. MOORE: By deposition only.

Mr. BERNSTEIN: What live witness did you—

Mr. FELDMAN: Smith, Robert Smith, Southern Color Print.

The COURT: Yes, a very impressive man. Now, what time do you want to start in the morning?

Mr. BERNSTEIN: I hope I am not imposing on the Court by suggesting nine o'clock or nine-thirty.

The COURT: It just happens I am here every morning at nine, otherwise you would be imposing on me, and I am not running for public office either. We will start at nine. Is that all right, gentlemen?

Mr. BERNSTEIN: Yes.

Mr. RAICHLE: Yes.

Mr. STEVENS: Yes.

The COURT: Good night.

(Thereupon the Court was in recess at 4:00 P.M.)

2359 (Proceedings resumed, pursuant to recess, commencing at 9:00 A.M.)

Mr. BERNSTEIN: If your Honor please, before we begin the redirect examination I would like to correct the numbering of an exhibit in yesterday's record. P-97 for identification is a document dated February 26, 1958, and headed "Notes Regarding Greater Buffalo Press." Thereafter, a document dated June 19, 1957, from Mr. Nicht to Mr. J. D. Gortatowsky was offered and received in evidence and a statement was made that it was being submitted at the request of counsel for the defendant, Greater Buffalo Press, to be included with some exhibits they had previously asked to be included to complete the story. That document is now marked P-97 in evidence, and since it is a duplication of numbering, I request that the number
2360 97 in evidence on the June 19, 1957 letter be deleted and it be renumbered and received in evidence as a new number.

(Thereupon document referred to was marked Plaintiff's Exhibit P-102 and received in evidence.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

Mr. STEVENS: Shall I proceed, your Honor?

The COURT: Yes, please.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Koessler, I have just a few questions. When Fred Ferguson, who was president of NEA back in the forties and early fifties, heard the report that your brother Kenneth and Leon Herman made in '47 and '48, after their trip in the south, he didn't think much of NEA's putting any money into a jointly owned color comic printing plant in the south?

A. That is what he said.

Q. As a matter of fact, do you recall that his comment
2361 was that NEA could make more money investing in Government bonds?

A. I am sure he said something like that.

Q. And however mistaken he may have been, he stuck to that position, didn't he?

A. Yes.

Q. Now, in 1955, as you have told us, Buffalo Color Press was in bad shape, wasn't it?

A. Mechanically, yes.

Q. As a matter of fact, it could fairly be described as a dying enterprise, is that so?

A. The machinery was all fifty years old or more, it wasn't any good to make money with.

Q. It was utterly useless to compete in the modern market?

A. Right.

Q. Actually, the plant itself was inadequate, wasn't it?

A. Yes, sir.

Q. Of course, you testified that Buffalo Color Press had been calling on Greater Buffalo Press for a substantial period of time to help them in repairs and keep the plant going?

A. That is correct.

Q. Of course, at that time, in 1955, Greater Buffalo Press,
prior to the purchase of Buffalo Color Press,
2362 was also printing substantial color comic supplement runs for NEA?

A. Yes, sir.

Q. Greater Buffalo never made any agreement to refrain from soliciting color comic supplement customers or to maintain or stabilize printing with NEA, did it?

A. No.

Q. Or with Buffalo Color Press?

A. No.

Q. Nobody at NEA or Buffalo Color Press asked for any such agreement?

A. No.

Q. Nobody at Greater Buffalo asked any such agreement?

A. No.

Q. You were shown an exhibit marked P-32, Mr. Koessler. It is a letter from you to Earl Anderson regarding your man, Fred Jerauld, dated December 5, 1956?

A. Yes.

Q. That letter is really nothing more than Greater Buffalo telling NEA that Greater Buffalo was going to go after the Albuquerque Journal business as a house account, isn't that right?

A. That is right.

Q. Of course, nothing in P-32 and nothing in any agreement you ever made with NEA barred NEA from getting 2363 printing from anybody else it could and try to sell that run, did it?

A. No. The Albuquerque Journal was never secured, by the way. That is still an Acme Color account.

Q. As a matter of fact, the Albuquerque Journal didn't become a Greater Buffalo run, did it?

A. No.

Q. It went to the Acme Color Printing Company out in San Bernadino, California?

A. It was with them originally. We were never able to get it away from them.

Q. Now, another document in evidence, P-33, is a sales report from NEA's salesman, R. C. Whitehead, regarding the Jacksonville, Florida Times-Union, this report being dated March 29, 1957. Did Greater Buffalo secure that run?

A. No, but we tried to.

Q. And when you tried to get it, when you told NEA that you were going to try to get it, again you were merely telling them that Greater Buffalo was exercising its right to try to get that account as a house account, isn't that correct?

A. Yes, that is right.

Q. Again, nothing which you said to NEA and no agreement which you ever had with NEA would have barred NEA
2364 to try to get that printing for the Jacksonville Times-Union any place else?

A. No.

Q. Who got that run?

A. King Features.

Q. In this report Mr. Whitehead, you will see, makes some comment about amounts which Greater Buffalo will pay. Are you familiar with his statements there?

A. I know nothing about this. That is his own judgment.

Q. As a matter of fact, Greater Buffalo never paid NEA on a run which Greater Buffalo took from it?

A. No.

Q. You had no agreement to pay them?

A. No.

Q. Mr. Whitehead's comments then in P-33 about what would have been paid if Greater Buffalo got the Jacksonville Times-Union run are totally wrong?

A. Yes. They are just his judgment as to what should be, what shouldn't be.

Q. On the general subject of payments to NEA by Greater Buffalo; Greater Buffalo has never paid NEA any continuing sum on runs transferred to Greater Buffalo from Buffalo Color Press after NEA lost the account, has it?

A. No.

2365 Q. You remember that when we were here in January—I believe it was 1966—there was extensive argument about money being paid by Greater Buffalo to NEA after King took a run, or to King after NEA took a run from it; Greater Buffalo never made any such payments, did it?

A. No.

Q. Certainly there never was any agreement or intention for you to pay it, was there?

A. Mr. Bernstein's contention, as I remember it, was that the contract we signed committed us to pay you—if King got a job we had to pay NEA. I don't know if it was vice versa, if NEA got a job we had to pay King. The contract wasn't intended to mean that. It never did mean it. We didn't recognize it as such and neither did NEA.

Q. Specifically looking at Appendix B to Plaintiff's Exhibit P-27, you recognize that as the schedule of named customers

which NEA turned over to—which NEA had in Buffalo Color Press and which were transferred to Greater Buffalo at the time of the sale of Buffalo Color Press?

A. Yes, sir.

Q. When NEA lost a customer listed on Appendix B, you never paid NEA any further commission, did you?

2366 A. No.

Q. To be specific, because the instance has been covered in the testimony, when NEA lost the Rome, Georgia News Tribune in 1956, your payments to NEA stopped, did they not?

A. Yes.

Q. And that has been true in every other instance where NEA has lost an account on this list?

A. That is right.

Q. We have had a lot of talk about Mr. Nicht, and my recollection is that you earlier described him as a man who never took any interest in seeing the other fellow's side; are my notes accurate?

A. Yes.

Q. And was Senator Long's statement, which you said applied to Mr. Nicht and his attitude, "Holler murder and never give an inch"?

A. That summed up his approach to business.

Q. Mr. Nicht, being a tough, rough, almost merciless competitor, was most vindictive toward NEA, wasn't he?

A. Yes.

Q. As a matter of fact, total elimination of NEA from the color comic supplement field was almost his cardinal principle of competition, wasn't it?

A. Yes. He sent out several bulletins to the salesmen
2367 that that should be their first business.

Q. You used the term, I believe yesterday or the day before, that he regarded NEA as King Features arch enemy?

A. Yes, he said that.

Q. He also used a lot of other strong terms, such as kill and murder NEA, did he not?

A. I don't know. I don't remember those, but it could have been.

Q. At least, they were equally strong?

A. Yes.

Q. To your knowledge, did he ever relax his attitude toward NEA?

A. No.

Q. At any time?

A. No.

Q. Is that true both before and after this Beverly meeting we have heard so much about?

A. Yes. I don't recall that he ever relaxed any competition against NEA at any time.

Q. As a matter of fact, when you spoke to Mr. Nicht about Rome, Georgia, as reported in P-41, and told him that NEA was complaining about his illegal combination of features and printing, he told you he did it, he was going to keep it up?

2368 A. That is right, that is what he put in the telegram.

Q. Insofar as NEA was concerned, he was relentless and implacable in his attitude of eliminating it totally from the color comic supplement field, wasn't he?

A. That is right.

The Court: What was the history of NEA? Had it been in that business a long time or was it trying to come in well after Nicht was established? What was the history?

Mr. STEVENS: King Features syndicate, was, I am sure, established substantially before. It had at one time, as you will recall the earlier proof and certain representations counsel have made, 100% of this color comic supplement field. NEA entered the field with, I believe, a six-page readyprint some time in the mid-thirties and it was coming along and increasing very slightly in the market. But, as the proof shows, the attitude towards it as a poacher, an interloper, was the one
2369 Nicht repeatedly and continuously held.

By Mr. STEVENS:

Q. You said both in direct examination by Mr. Raichle and yesterday, I believe, in response to questions by Mr. Bernstein, that Greater Buffalo wanted to keep its plans about Lufkin to itself, not tell NEA and King?

A. That is right.

Q. And the exhibits which were shown you late yesterday, I believe they were Exhibits 44 and 46, being Herbert Walker's letters to Eli Minton, are really nothing more than Mr. Walker's efforts to piece together bits of information so that he could know as much as possible about the field?

A. That is about it, yes.

Q. Certainly you were not giving him any real help in finding out about it?

A. No.

Q. Now, the attitude which you had about keeping the development of Lufkin to yourself was equally true regarding NEA and your acquisition of International Color Printing in '55, wasn't it?

A. Yes, sir.

Q. And you know of no reason to doubt Mr. Walker's statement in P-51, which was dated August 2, 1955, that he was surprised when he learned of that acquisition?

2370 A. I think he was. We hadn't told him. I don't know how he would find out until it was public knowledge.

Q. Yesterday you were also interrogated about Plaintiff's Exhibit P-43 and 42, these were two letters which refer to Sioux City, Iowa, Sioux City Falls, South Dakota, and Fargo, North Dakota. At the end of your testimony on that subject, you made the comment, I believe, that these really show the competition between NEA and King, am I correct about it?

A. Yes, that is right.

Q. As a matter of fact, at that time, in 1960, NEA and King were competing tooth and nail in the color comic supplement field, weren't they?

A. Yes.

Q. In truth, these letters are evidence of the fact that when King, for example, undertook to get the run in Sioux City, Iowa, that NEA fought back as best it could to hold the business?

A. Yes.

Q. The same was true as to the Fargo run?

A. Yes, sir.

Q. In the letter which you wrote to Mr. Anderson, dated March 15, 1960, P-43, you say: "Fargo and Sioux Falls go together, as I understand it, and the combined circulation is in excess of 100,000." By saying they go together, 2371 you were referring to the fact, were you not, that those two runs were a readyprint?

A. That is right.

Q. And by "readyprint", you know better than I, we mean a run in which there was a single makeready charge for the total run?

A. That is right.

Q. And that all you had to do to adapt the Sioux Falls comic color supplement from the Fargo was to change the masthead or banner?

A. The name of the newspaper.

Q. The name of the newspaper. When you said in this letter, dated March 15, 1960, "This job should present no problems competitively", you were referring, were you not, to the fact that by having a readyprint run in excess of 100,000 the rate at Greater Buffalo Press was less per thousand than the rate at International?

A. Yes.

Q. In other words——

A. Or equal.

Q. Or equal. In other words, am I correct, that the flat rate and no charge for the page changes, which King enjoyed
2372 and had enjoyed for many years at International in Wilkes-Barre, gave King an advantage on short runs?

A. That is so.

Q. But when NEA could work out a readyprint which boosted the total run to approximately 100,000, then NEA was, price-wise, competitive on the printing with King?

A. Yes.

Q. So that is the only thing you referred to when you said, "This job should present no problems competitively"?

A. That is exactly what I meant.

Q. There has been considerable talk about King Features practices in trying to get a commission when it lost a run?

A. Yes.

Q. No matter how often King Features tried to shake down Greater Buffalo or actually shook it down, as in the case of Waterloo, Iowa and the Harte-Hanks papers, there is no doubt NEA never did that, is there?

A. No, sir, they didn't.

Mr. STEVENS: That is all, thank you.

Mr. RAICHLE: I have one or two questions.

REDIRECT EXAMINATION

By Mr. RAICHLE:

Q. If you hadn't purchased International Color Printing at Wilkes-Barre, nonetheless would you have built or
2373 opened a plant in the southeast somewhere?

A. Yes, sir.

Q. One more subject matter of inquiry. You said something to his Honor yesterday about not having raised prices in twelve years; did I hear you correctly?

A. That is right.

Q. Does that mean each time you had a labor increase that you absorbed the increase?

A. For twelve years.

Q. And when I say you, of course I mean Greater Buffalo Press—

A. Yes. —

Q. In its various plants?

A. Yes.

Q. Now, in one of the plants did you, as the price of newsprint went up, increase the price?

A. Yes. The price of newsprint went up, we passed along the same amount to the newspapers. In other words, they paid the increase, no more.

Q. And if your price reaches a level slightly higher than the price you do charge, would it then be cheaper for the newspapers to print them themselves?

A. That is very possible.

Q. You said that the ordinary newspaper with modern equipment can readily print its own?

2374 A. They can.

Mr. RAICHLE: That is all.

The COURT: Mr. Koessler, I have learned over recent years food chains like Loblaw's—I never have had experience, of course, in that field—but I have learned that the margin of profit is extremely small, they survive on a vast volume. You said the other day something about your margin of profit being very small?

The WITNESS: Yes.

The COURT: At least as the layman might look at it, it would be small. Is it true then that your success today and in the past years has been based on large volume?

The WITNESS: That is right, sir.

The COURT: In other words, you must do a vast business?

The WITNESS: Yes.

The COURT: In order to survive?

The WITNESS: To make any money, yes.

The COURT: Because you have this vast volume you were able to not pass on greater costs to newspapers, is that

2375 the fact?

The WITNESS: That is right.

The COURT: All right. Is there an analogy between your business and the food type business?

The WITNESS: In that the profits are very small, the percentage of profits are very small.

The COURT: All right.

RECROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, in answer to Mr. Stevens' questions about the Jacksonville, Florida Times Union, on P-33, I understood your testimony to be that you merely wanted to tell NEA that this was a Greater Buffalo house account and that Greater Buffalo would compete. Was that the substance?

A. We didn't tell them anything. You see the letter. We didn't know anything about that, that hasn't anything to do with us at all.

Q. Then if the record shows that your testimony was that you merely wanted to show NEA that this was a house account and that you would compete, that is incorrect?

2376 A. What are we talking about; Jacksonville?

Q. The Jacksonville, Florida Times Union.

A. We bid on the Jacksonville Times Union.

Mr. BERNSTEIN: I object, your Honor. That isn't the question. The question is—

Mr. STEVENS: I object. I think he is entitled to answer. You haven't accurately stated what he said.

The COURT: Mr. Bernstein, I am not going to split hairs over things. Sooner or later Mr. Koessler is going to have a full recital of whatever he wants to tell me here.

Mr. BERNSTEIN: I withdraw the question.

The COURT: Let him explain. As I get it, there is a newspaper jargon that these men know, I do not know it, and there appears very clearly to be things said regularly which have other interpretations entirely. I am completely an outsider on that. I need all the help I can get.

Mr. BERNSTEIN: I want to be careful that we get Mr. Koessler's recollection and not a repetition of some document
2377 that he has not read with a characterization that gives his present state of mind. I want to explore the facts.

By Mr. BERNSTEIN:

Q. My question to you, Mr. Koessler, is this. With respect to P-33, the piece of paper that you had in your hand, and

that Mr. Stevens questioned you about just a few minutes ago, this morning——

A. Yes. ——

Q. Is it a fact—this is my question—is it a fact that with respect to the Jacksonville, Florida Times Union, you were trying to tell NEA that that was a Greater Buffalo house account and they could expect you to compete for that account?

A. I didn't tell them anything. Look at this.

Q. Thank you very much.

A. That is an inter communication, that hasn't a thing to do with me.

Q. Thank you very much. That is what I wanted to clarify. When the Greater Buffalo Press purchased the stock of International in June, 1955, what press release or publicity did you give to your purchase of the stock of International?

2378 A. I gave none to no one.

Q. Why was that?

A. We don't go around looking for publicity. We don't do those things.

Q. Was it generally known in the trade that Greater Buffalo owned——

A. They found out about it in Wilkes-Barre. I didn't inform anybody about it.

Q. When?

A. You will have to ask Mr. Gorman about it.

Q. I will. In your opinion, you tried to keep yourself informed of what was going on in the trade; did you have any indication at about the time you purchased the stock of International that other of your competitors, other newspapers, knew that Greater Buffalo had purchased the stock of International?

A. No, I don't think anybody knew about it.

Mr. STEVENS: It is a small point—just a moment, please—I think you want the record accurate. They did not purchase this stock, to my recollection. I don't believe they purchased the stock of Buffalo Color Press.

Mr. BERNSTEIN: I am talking about International, 2379 purchased the stock of International. When Greater Buffalo purchased the stock of International.

Mr. STEVENS: Excuse me.

By. Mr. BERNSTEIN:

Q. So the fact is, Mr. Koessler, that to your best knowledge and belief it was some time—Greater Buffalo Press owned the

stock of International Color Printing for some time before the people in the trade generally knew about it, is that correct?

A. I think so, yes.

Q. And was one of your reasons in keeping this quiet to lead the newspapers to believe that when King came in to solicit their business, or NEA came in to solicit their business or Greater Buffalo came in to solicit their business, it was really all being printed in one place?

A. No. We knew some time or other the information would get out. We just didn't hire any press agent to put it in the newspapers.

Q. Now, with respect to Buffalo Color Press and P-27, the contract that you bought this from Buffalo Color Press, there were accounts listed in that contract. I understand your testimony to be that when NEA didn't have the contract
2380 to print that account, then Greater Buffalo didn't pay NEA a commission, is that correct?

A. If they lost the account the commission stopped.

Q. Let's explore that a bit. If NEA lost the account, it was not then being printed at Greater Buffalo?

A. Right.

Q. Do you know of any account, can you name one account that NEA had the contract with and Greater Buffalo took the account away from NEA and didn't pay NEA a commission and continued to print at the Greater Buffalo Press?

A. Yes.

Q. Which one?

A. Atlanta, Georgia.

Q. Atlanta, Georgia had been printing its own?

A. No. Atlanta, Georgia, we had the account through NEA.

Q. When was that, what period of time?

A. Oh, we have had it a long time, back in the forties or fifties.

Q. For NEA?

A. NEA—we printed the job first through NEA, they got the account.

Q. How long did you continue to print it through NEA?

A. Three or four years, maybe longer.

Q. When did it become Greater Buffalo's account?

2381 A. The Atlanta Journal wanted to contract directly with Greater Buffalo and we discontinued the commission to NEA.

Q. Did you discontinue the commission to NEA after Greater Buffalo purchased Buffalo Color Press or before?

A. This was before.

Q. So that you were paying NEA commissions on business before you purchased the Buffalo Color Press?

A. We were paying commission when they were—when they held the contract for the job, we paid them a commission, when they lost the contract and we took it ourselves, we didn't pay them.

Q. Now, I am talking about the time prior to the Greater Buffalo purchase of NEA's printing plant in Buffalo, I am talking about that time.

A. That was prior to then, yes.

Q. At that time—

A. We took over the Atlanta Journal in 1950 and I think the commissions were stopped then.

Q. All right. Let's take 1949, before you took over the Atlanta Journal. At that time did NEA have a contract with the Atlanta Journal?

A. Yes.

Q. Did you quote NEA a price for printing the
2382 Atlanta Journal?

A. Yes.

Q. And did you give them a commission over and above that price?

A. No. It worked the other way, as I recall. We printed at a certain price for NEA, NEA sold it to the Atlanta Journal. In other words, we were sub-contractors in that case.

Q. Where does the element of commission come in?

A. They sold it for more than—our price to them was less than they sold it to the Atlanta Journal, I assume.

Q. You call that a commission?

A. I don't call it a commission, no. It is a profit you make on a job that is sub-contracted.

Q. That was a profit in 1949, the Atlanta Journal, you were not paying them a commission, isn't that correct?

A. That is the way the arrangement was. We printed it, they sold it to the Atlanta Journal. I assume they made money on it, they kept it.

Q. In 1950 when Greater Buffalo took the account away from NEA, NEA couldn't make any profit on that account, is that correct?

A. They didn't.

Q. They didn't?

2383 A. No.

Q. Now, I am talking about—name me one paper after 1955, when Greater Buffalo purchased from NEA the Buffalo Color Press plant and agreed to give them a commission on certain specified newspapers and on all new business printed at the Greater Buffalo Press, name me one account from that time thereafter when Greater Buffalo took the account away from NEA and didn't pay them a commission?

A. The Miami News.

Q. When was that?

A. I don't know the years NEA had the contract for the Miami News.

Q. What happened?

A. The Miami News decided they wanted to contract with us directly. We took the contract, we cancelled the commissions.

Q. Had you been paying commission up to that time?

A. Yes, it was NEA's business.

Q. What was the discussion with NEA—

A. Wait, I don't think we were paying a commission, it worked the same way, we did the job at a certain price, they sold it to the Miami News.

Q. Was that after you had purchased Buffalo Color Press?

A. I think so.

2384 Q. Can you recall any accounts that King took away from NEA and were printed at the Greater Buffalo Press plant and were not printed at Wilkes-Barre, not printed at Lufkin, not printed at Sylacauga? Can you think of any of those? Can you think of any newspaper account, after you purchased Buffalo Color Press, that King took away from NEA that was not printed—that was printed at the Greater Buffalo Press plant in Dunkirk or Buffalo?

A. Oh, I am sure there were some. They just don't come to mind.

The COURT: What was your question, printed or not printed?

Mr. BERNSTEIN: My question—

The COURT: Any account that King took from NEA which was what?

Mr. BERNSTEIN: Printed at the Greater Buffalo plant in Dunkirk or Buffalo. In other words, your Honor—Mr. Koessler, is this correct—most of King's business was printed either at Wilkes-Barre, Sylacauga or Lufkin.

The COURT: What was wrong with that?

Mr. BERNSTEIN: I am trying to explore the accuracy
 2385 of the witness's testimony that Greater Buffalo never
 paid a commission on any run that was lost to NEA
 after NEA lost the account. That is quite conceivable, your
 Honor, because if the run wasn't printed at Greater Buffalo
 Press they would not pay the commission. If King took the
 account away and printed at Wilkes-Barre or Lufkin or
 Sylacauga, naturally, NEA wouldn't get a commission on that.
 On the other hand, if that account was printed in Buffalo, then
 NEA would get a commission on that because the contract
 provided that NEA would continue to get a commission on
 any one of its accounts as long as the printing was done in
 Buffalo or Dunkirk.

The WITNESS: Mr. Bernstein, we disagree with that.

Mr. BERNSTEIN: I understand.

The WITNESS: The facts are that NEA never got a Commis-
 sion on any business that we printed for King Features,
 2386 never.

Mr. BERNSTEIN: Right, and I will argue later to the
 Court that that is for another reason, not the one that you sug-
 gest. We will go on to another matter.

By Mr. BERNSTEIN:

Q. On P-32, with respect to Albuquerque, New Mexico, that
 newspaper, in 1956 Greater Buffalo Press was trying to get that
 business, is that correct?

A. Yes.

Q. And——

A. And since.

Q. You didn't succeed in 1956?

A. No.

Q. You said that Acme got the business in——

A. Acme had the business.

Q. And continued to retain it?

A. Yes.

Q. Greater Buffalo Press has continuously sought to get it?

A. Sure.

Q. One final point. You reconfirmed this morning what
 I understood your testimony to be right along; that
 2387 the Buffalo Color Press plant was old, inadequate, un-
 able to successfully compete and successfully operate?

A. Yes.

Q. Why did you buy it?

A. Well, we were doing a lot of business for NEA and they wanted to transfer all the business, the business of Buffalo Color Press, and they wanted to get rid of some of the machinery.

Q. The contracts with the newspapers were held with NEA is that right?

A. I think so, yes.

Q. Buffalo Color Press was doing the printing for NEA?

A. At that time, yes.

Q. And you wanted to get the business that was then being printed at the Buffalo Color Press plant, not intending to continue the Buffalo Color Press at all, is that correct?

A. We didn't continue the Buffalo Color Press plant, no.

Q. You didn't intend to, did you?

A. No.

Q. Well, is this a truthful statement or not—how much did you pay for that?

A. \$25,000.

Q. \$25,000, a relatively insignificant amount. Was the 2388 junk equipment worth \$25,000?

A. We took some pieces of equipment out of there that if we bought them it would cost—we come out all right, we sold one press in Mexico, took stereotype equipment out to Greater Buffalo.

Q. How much did you sell the press for in Mexico?

A. \$5,000.

Q. How much was the value of the junk stuff you took out of there, \$5,000?

A. No, no, more than that. I mean, they had good stereotype equipment.

Q. They did? It wasn't as junky as—

A. The press equipment was pretty junky.

Q. What other equipment was good?

A. They had one folder that was good.

Q. What else?

A. The folder itself would have cost \$25,000 if we had to buy it new.

Q. So that you did get valuable equipment for the money that you paid?

A. In terms that we could use it, if we had to go out on the market and buy it new, it was a bargain.

Q. So that any other color printer could have bought the

equipment, Buffalo Color Press, and used it to the same advantage you did?

2389 A. I am sure they could, if they offered to, it would have been sold to them too.

Mr. BERNSTEIN: I have no further questions.

Mr. RAICHLE: Nothing further.

The COURT: As I remember, you had rather a close relationship with that manager of Color Press. You said one time that you used to go and patch him up from time to time?

The WITNESS: That is right.

The COURT: His machinery?

The WITNESS: Many times.

The COURT: All right. I guess that is all.

Mr. RAICHLE: That is all, Mr. Koessler.

(Witness excused)

2390 JOSEPH J. GORMAN, called as a witness in behalf of the Defendant, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman, where do you live?

A. 581 Meadow Lane, Kingston, Pennsylvania.

Q. Where is Kingston?

A. Next door to Wilkes-Barre, across the river from Wilkes-Barre.

Q. How long have you lived in the Wilkes-Barre area?

A. All my life.

Q. How old are you?

A. Pushing 71.

Q. And what is your present occupation?

A. I am president and general manager of International Color Printing Company.

Q. How long have you been general manager of International Color Printing?

A. International is a successor, a corporate successor to Telegram Publishing Company. I have been general manager for forty-six years.

Q. Now, what did you do before that?

A. I was a reporter.

Q. And where did you work as a reporter?

2391 A. I worked as a reporter on the Wilkes-Barre newspapers.

Q. What did you do before you were a reporter?

A. I worked in the mines.

Q. Whereabouts?

A. Wilkes-Barre, Pittston, Pennsylvania and West Virginia.

Q. During the time that you were a reporter what was the Wilkes-Barre paper?

A. The Wilkes-Barre Evening News.

Q. Is that the company that eventually became International Color Printing Company?

A. That is not correct. I left the Wilkes-Barre News to become the Wilkes-Barre correspondant for the Elmira Telegram, which was rather strange because Wilkes-Barre is 150 miles from Elmira.

Q. And then what was your next association? What happened to that job?

A. I was the local correspondant of the Elmira Telegram until Mr. Ralph Govin, Sr. bought the Elmira Telegram from Harry Brooks, and then we—I continued to be the local correspondant until he sold the Elmira Telegram to the Gannett chain and then on my suggestion, which wasn't a fortunate one, he kept the Wilkes-Barre branch and turned it into a Wilkes-Barre Sunday newspaper. I was the editor and general manager, and it was too fast a step, because that
2392 means I was editor and general manager six years after leaving the mines.

Q. How old were you then?

A. About 24.

Q. And what was the name of that paper?

A. The Wilkes-Barre Sunday Telegram.

Q. Now, what happened to that paper?

A. It flopped dismally because, primarily, I was too soon after the mines. Also, we had no equipment of our own. We rented our equipment from the Evening News. We paid a very heavy overtime on Saturday night. Frankly, I don't think I was fully equipped to follow my predecessor.

Q. You—

A. The time came when a Pittston newspaper, a small one, housed in a very small dwelling, had a fire. They had a two deck hole single width press, they had two or three linotype machines. The fire damaged the press to some extent and damaged the linotype machines to the point where the newspaper couldn't proceed, and I conceived the idea of getting out

of our overhead troubles by operating—printing the paper in Pittston, and I suggested that to Mr. Govin, and we tried to take the press and equipment over in that little house and print the Sunday newspaper.

2393 Q. Now did there come a time when this company owned by Mr. Govin ceased to operate as a newspaper?

A. In early 1924 the fire took place in the building of the Pittston Press. After I talked to Mr. Govin, I went to New York to R. Hoe and Company, who owned the press, had taken it back on a mortgage from the Pittston Press, to see if we could take that plant over and print our newspaper in it. While sitting in the library of R. Hoe and Company, 504 Grand Street, waiting for a salesman, I saw a brochure on the table. It said something to the effect that this press—and the press was pictured there—could print two colors at such and such a speed, and the thought came to me maybe we could print our comics on that press because at that time we were buying our comics from the Buffalo Times which later became the Buffalo Color Press. The salesman came out and I asked him this question. He said, "No, you need four colors to print a comic." I said, "How would we go about getting four colors?" He said, "Buy two more decks." "Where would we get them?" He said, "Down in Allentown there is two used decks, two bottom decks. You can patch them to the top of the two you have got and print four colors." Then it occurred to me we could print 2394 our own comics and at the same time, or immediately after, the thought followed that while printing for ourselves, perhaps we could print for others, just as the Buffalo Times was doing.

Q. The Buffalo Times?

A. The Buffalo Times, later become the Buffalo Color Press, and which was selling us our comics.

Q. Well, at any rate, Mr. Govin, through this corporation acquired these facilities?

A. That is right. We sold the newspaper for \$2,000 which was—

Q. And the corporation's name was changed to International Color Printing?

A. International Color Printing Company.

Q. And what year was that?

A. That was in 1924.

Q. Now, who was the first customer of International Color Printing Company?

A. King Features Syndicate.

Q. And how did that come about?

A. I went to see King Features Syndicate. First I saw Mr. Koenigsberg, who was head of the syndicate at that time. He turned me over to Mr. Paquin. Mr. Paquin said that if we could do the job, he would be interested in letting us have some work. I didn't know anything about printing comic supplement or prices. I went out to a plant in Kansas City and stayed a while until I learned something about printing and something about prices, and came back to see Paquin just about two days before it was time for me to be married. He said the price is all right if the job was all right. So we rebuilt the press, took a chance, they gave us an order for printing 300,000 weekly.

Q. At that time what was the business of King Features?

A. At that time King Features was selling features, comics, the same as they are today, but also they were selling—they were selling—I mean they were selling comics, features, columns, the same as they are today—they were also selling readyprint and they were having the work done in two or three different plants, namely, the Barrack Publishing Company in Kansas City, McClure in Brooklyn, Richmond Times Dispatch, and a few in Indianapolis.

Q. We have had a lot of talk about readyprint. Would you just tell us in simple language what you mean by readyprint?

A. A readyprint is a combination of pages, which is to be used for a number of newspapers without changing the pages as you move from paper to paper, and King Features listed in that 300,000 about four or five readyprints, different readyprints, for a flat price per hundred thousand, with the provision that the overall number of plate changes per hundred thousand would never go higher than a certain figure.

Q. Now, when you refer to a readyprint, you refer to a section of four to eight comic strips printed on regular comic strip paper?

A. It could be four, eight, ten, twelve, sixteen. Readyprint is generally smaller than sixteen.

Q. These readyprints, the same readyprints would go to a number of papers?

A. That is right.

Q. And the only change that will be made is that the mast-head of each paper will be printed on their——

A. As far as the readyprints are concerned. Sometimes we would add one or two pages to an existing readyprint.

Q. Was this the bulk of your original business with King?

A. You mean comic printing?

Q. Yes.

A. That is all we did for King.

Q. Now, in addition to King, the King business—King was the first customer?

A. That is right.

Q. Did you obtain any other customers?

A. All of our dealings at that time were with Mr. 2397 Paquin, the service manager. He gave us the right to go out and look for business on our own. We went to Asheville, North Carolina, and we picked up a supplement there. We went to Providence, Rhode Island, and we picked up a supplement there. We never got any other additional business on our own. We kept those two only until Mr. Nicht come into the picture and he suggested we turn those two runs over to King Features and from that time on print exclusively for King.

Q. Now, when did Mr. Nicht come into the picture?

A. About 1927. He was sales manager prior to that. Nicht started with the Hearst organization about 1917. He worked for INS, International News Service, and King Features. He became sales manager about 1921 or 1922. He had no connection with us to speak about, no direct connection, until 1927. From 1927 until he died, he was practically the sole representative of King Features as far as we were concerned.

Q. He died in——

A. I think 1964.

Q. Now, during this period—directing your attention to the period from 1927 until 1955, when the stock of International was acquired from Greater Buffalo—did International employ any sales people?

A. Never.

2398 Q. Did International ever solicit an account?

A. Never after 1927.

Q. And you printed exclusively for King Features?

A. Correct.

Q. During this period of 1927 to 1955, did you or anybody else on behalf of International ever engage in sales activity in company with King?

A. Yes. From time to time I went out with King Features salesmen for the purpose of explaining press capacity, flexibility of equipment, the size sections which could be obtained, and transportation; always with the instructions, the understanding, that when it came time to talk about price I should leave the room.

Q. And did you?

A. I did.

Q. So that you never at any time had anything to do with the negotiations of contracts between King and its newspaper customers?

A. No negotiations directly with the newspapers.

Q. Directing your attention again to the period of 1927 to 1955; would you describe for the Court the operational relationship you had with King; how did you operate as between International and King?

A. You mean the corporate relationship, that is, between me and King Features?

2399 Q. Well, no, Let me ask you, if I can rephrase it better, did you operate pursuant to a contract?

A. Oh, starting about 1927 we entered into a contract under which we had to print exclusively for King. I have forgotten the length of the first contract, I think perhaps it was for ten years. Then later there was another ten-year contract, and a three-year contract. But from 1940 on we have been under a six-month cancellation basis.

Q. From 1940 on you had no contractual relationship except one terminable on six months' notice?

A. 1942, 1943, I'm not exactly certain as to the year of the contract.

Q. And what was the financial arrangement for printing; was each paper printed on a separate basis or did you have a formula?

A. We had a flat basis per hundred thousand over the greatest part of that period. Mr. Nicht had the idea that the good papers, the big papers, should pay for the little ones. The little papers we certainly made no money on, the big papers we might have made a little. His theory, I think, was that he wanted to sell small papers if he could, because he could sell features. He

2400 wanted everything, large and small. But he did not preclude small newspapers because we were willing to take them, and did take them.

Q. Now, over this period of time did you have negotiations with Mr. Nicht with respect to obtaining more money for International for printing?

A. I would say over forty years I talked with Mr. Nicht nearly every day. I had letters several times a week. I met with him at lunch or otherwise not less than 500 times, and the greatest part of our conversations was about more money for us, more flexibility for him, more expansion to suit him, but despite our demands for money throughout the years we were never able to get more than enough to allow us 1% or less net profit.

Q. Now, during this period of time were there occasions when Nicht would call you with respect to cutting your price on a particular job?

A. Frequently.

Q. And this was in connection with some negotiations he was carrying on to obtain the work?

A. That is correct, and very often I gave them to him, special prices, and on occasion—I learned later that after he had the contract signed, he would call me for a cut in price, I gave it to him, and then I learned that before I gave him the cut, the contract had already been signed. I learned that accidentally through correspondence that came to my office. I 2401 learned it through Hornady, his assistant, I learned it through Capparell, one of his assistants.

Q. Did you discuss this with Mr. Nicht?

A. I discussed that with Mr. Nicht and he said, "Well, that is business."

Q. Now, did there come a time when you had discussions with Mr. Nicht with respect to the ability of International to produce the printing of color comic supplements at a cheaper price and in a more flexible manner?

A. That was constantly part of our discussions, back from 1930 on, and also a good part of our discussions over thirty years was what he considered to be the need for a plant in the south and a plant in the middle west.

Q. And in addition to these other facilities, did he discuss with you the facilities that you already had at Wilkes-Barre and the efficiency of their operation?

A. He had very little respect for the efficiency of our operation at Wilkes-Barre, despite the fact that he, personally, had been in the plant only once in 40 years.

Mr. STEVENS: Excuse me, would you read that last answer.

2402 (Thereupon the last answer was read by reporter.)

By Mr. MOORE:

Q. Now, over the years you had good operators, good superintendents in your plant, did you not?

A. I think we had very fine press foremen; a very, very excellent machinist superintendent, who was also a craftsman. Mr. Nicht kept constantly referring to what Buffalo was doing in the way of flexibility.

Mr. RAICHLE: I didn't hear that.

The WITNESS: What Buffalo was doing in the way of flexibility.

By Mr. MOORE:

Q. You mean Greater Buffalo?

A. Greater Buffalo. Now, when you say did I have good men? I did have good men. We bought plants from Hearst, which they ran at 14,000 per hour, we rebuilt them and run them at 30,000 per hour. So, therefore, we had good men. But he claimed, and he was right, that despite the fact that we had improved our production 100%, we were still not in a class with Greater Buffalo Press from a production and flexibility standpoint.

2403 The COURT: Excuse me. What does flexibility mean?

The WITNESS: The ability to print a great number of different size sections, from four pages up to say, sixty-four with multiples of two.

The COURT: Thank you.

By Mr. MOORE:

Q. Now, in consequence, as a result of these constant conversations and complaints of Mr. Nicht, did you look into this matter of improving your operation further?

A. Over a period of 40 years I have been in every color printing plant which has been in existence in that period, even Greater Buffalo Press, clandestinely.

Q. In other words, did there come a time when you got into the Greater Buffalo Press plant when they didn't know about it?

A. I got in there twice when they didn't know about it. I learned that if I tried it again I would be thrown out on my ear.

Q. When was this?

A. My first visit to Greater Buffalo was about 1933, 2404 when they had a plant on Niagara Street, shortly after they had purchased the press from the Syracuse Herald. I knew about the purchase of the Syracuse press because I had driven a Model T Ford, at the request of Mr. Nicht, to Syracuse, to make an investigation of the cost of their printing, because they were doing their own work. I walked into the Greater Buffalo Press—into the Syracuse plant and told them frankly what I was after. Mr. Nicht thought that he could do the printing cheaper if I would talk about their costs, if I would show them they figured their costs too low. Mr. O'Hara said, "You are too late, we have sold the press to Greater Buffalo."

Q. Well, so you were in the Greater Buffalo plant, you say?

A. I was in the Niagara Street plant, and later I was in the Grote Street plant.

Q. Without their knowledge?

A. Without their knowledge. I had a narrow escape in the Niagara Street plant because there was a man named Vanette, a sales engineer I knew, who happened to be there at the time, and he came to me and he said, "You better get out, it is going to be embarrassing for me if I have to tell them who you are." At that time Kenneth Koessler was casting plates—

Q. You were watching?

2405 A. Koessler's father was on the floor, doing general supervision.

Q. In addition to the trips you made there, did you, on occasion, have some of your people get into the Greater Buffalo?

A. They were in the Buffalo plant on Grote Street, they also went into the Dunkirk plant. They came home to me with the general description of the lineup of the presses, the general operation, but they failed completely in their attempt to learn anything about preregistry.

Q. How about you, did you learn anything about preregistry?

A. No, I did not. I told Mr. Nicht that I had failed, I just frankly didn't know how to preregister, I did not know how to secure some of the flexibility he was after. He said, "Well, why don't you go to Hoe and see what they can do."

Q. Who is Hoe?

A. A manufacturer of press equipment. I did go to Hoe and Company, I talked to Mr. Fred Lamanch, the chief engineer. I told him our problem and he said, "Buffalo—Greater Buffalo, we find can do many things that we can't do." I went to Goss Printing Press Company in Chicago and got the same
2406 information. The next time Mr. Nicht complained, I reported this to him. He said, "Well I don't believe you, I will go and find out myself." Now, he went to Hoe and Company, despite the fact he hadn't the slightest idea what he was looking for, and he talked to the chief engineer, and they told him what he was expecting me to do in a short period of time with practically no money was an impossibility.

Q. Now, did you, during the course of this period, talk to Nicht about increasing his price to International for the purpose of enabling you to do some of this research and development, during the period say 1927 to 1955?

A. Constantly.

Q. And what was his answer to those?

A. More often than not I left the room with less than I had when I went in.

Q. Now, directing your attention to the period beginning about 1950 and continuing on to 1955, would you say that your difficulties with Nicht had increased?

A. He became more persistent than ever with regard to a plant in the south, and I was just as insistent that a plant in the south, to be built by us, was an impossibility without a long-term contract with King Features at a higher rate, which
2407 would enable us to obtain a loan from a bank, and with a profit sufficiently large to allow us to pay dividends and amortize that loan within a reasonable period of time. I repeated that same thing over and over and over, by telephone, personally and by letters.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked Defendant Greater Buffalo's D-7 for identification.)

By Mr. MOORE:

Q. Now, during this same period, from 1950 to 1955, did Nicht, in his negotiations or conversations with you, refer to placing King business at some other plants?

A. Constantly threatening and mentioning Eastern Color, Star at Wilmington, Southern Color and finally Greater Buffalo—

Q. And——

A. — also the possibility Hearst would do their own printing in their own plant.

Q. Now, about Hearst doing their own; did Hearst own some modern color printing facilities?

2408 A. They owned two plants. At one time they owned plants in Baltimore, New York, Chicago, San Francisco, Los Angeles. They junked those eventually—what we call junk then—they sold them to us and others and we used them. They purchased for approximately six million dollars the equipment for two plants in San Francisco and Chicago, which were supposedly, in the opinion of Hoe and in the opinion of the Hearst experts, the last word in color printing, color printing equipment.

Q. And these plants, the facilities of these plants were capable of printing all the color comic supplements that King Features placed with you, were they not?

Mr. BERNSTEIN: I object to the leading. This is a delicate area. I would like to have the witness testify.

The COURT: You know the equipment they had?

The WITNESS: Yes. I would say——

The COURT: Could they take over?

The WITNESS: With some changes in the equipment to suit the business.

By Mr. MOORE:

Q. Did you find out that during this period of 1950 to 1955 that Nicht was negotiating to place King business
2409 with other printers?

A. He told me so.

Q. The ones you mentioned; Southern——

A. Southern, Eastern, Star, Greater Buffalo.

Q. Now, during the period from 1927 to 1955, who owned the stock of International?

A. In the year 1924 and early 1925, the stock was owned by Ralph Govin, Sr. I owned one share, John W. Booth owned another share. Mr. Govin died in approximately the middle of 1925 and the estate was left to his wife, Mrs. May M. Govin. She became the sole owner of the stock.

Q. And——

A. No, I beg your pardon, she became owner of 50% of the stock. 25% went into the ownership of Ralph Govin, the son: 25%, Mazie Govin, the daughter.

Q. Did any of the stockholders live in Wilkes-Barre?

A. Mr. Govin never lived there. Mrs. Govin never lived there. Ralph Govin, Jr. lived there on and off between running a newspaper in Havana or attempting to run it, on and off until 1945, and he came back not at all after that. Mazie Govin never lived there.

Q. Now, so that at least by 1950 and continuing on to 1955, none of them lived in the Wilkes-Barre area?

A. No.

2410 Q. And who ran the company?

A. I did.

Q. And did you run it pretty much on your own?

A. On my own, from the beginning until the end, and practically the only discussion I ever had with owners was when we wanted to get into the expansion a little bit or when they wanted dividends, which was quite frequently.

Q. Just historically, what was the investment in this company?

A. Mr. Govin, Sr. had several companies. From one company or another we obtained sums of money totalling \$50,000 between 1925 and 1927. That was the total investment and that was repaid about 1928 or 1929. That was the sum total of their investment.

Q. And the owners put no further money into the business?

A. At one time we borrowed \$35,000 from Mrs. May Govin—not May—Mazie Govin, who later became Mrs. Schoolmacher, then Mrs. Von Lochorst and then Mrs. Scofield.

Q. From time to time, up through 1955—

The COURT: You mean the woman changed her name several times?

The WITNESS: Three times she married.

The COURT: We'll take a short recess.

2411 (Thereupon the Court was in recess at 10:30 A.M.)
(Proceedings resumed, pursuant to recess, commencing at 11:10 A.M.)

By Mr. MOORE:

Q. Mr. Gorman, I show you Exhibit D-7 for identification, and ask you if this is a copy of a letter you received from Mr. Nicht, dated August 23, 1951?

A. Just to identify it or read it?

Q. Just identify it.

A. I think it is a copy of a letter received from Mr. Nicht.

Q. And you are familiar in general with this letter?

A. I received so many letters, I would have to look at it.

Q. Well, I want to ask you whether or not this letter is representative of the discussions and correspondence that you had with him concerning the operations of International during this period of time?

Mr. BERNSTEIN: I object, your Honor, on the grounds——

Mr. MOORE: I will withdraw the question. I will offer the letter in evidence.

2412 Mr. BERNSTEIN: No objection to the letter going in evidence.

(Thereupon Defendant's Exhibit D-7 previously marked for identification, was received and marked in evidence.)

By Mr. MOORE:

Q. Now, directing your attention to the period beginning in 1950 and continuing through June of 1955, can you state what the financial condition of International was during that period?

A. It is my recollection that in 1950 or 1951 we amended whatever contract we had to provide that from that time on we would not get from King Features approximately \$600.00 per week, which was extra compensation, flat, weekly, obtained during the war years. At the same time our price per thousand was reduced one cent. Why that happened I don't know, unless it was the result of Mr. Nicht's persistence.

Q. Now——

A. Starting——

Q. Directing your attention to this period, what was the financial condition of the company?

A. It is my recollection that in 1952 we started to
2413 show a deficit in working capital.

Q. Beginning in 1952 your current liabilities exceeded your current assets?

A. By an amount I can't recall, but built up to approximately \$100,000 deficit at the end of 1954.

Q. At the end of 1954 you had a minus \$100,000 working capital?

A. Right.

Q. You had no working capital?

A. Right.

Q. Now, what happened to the profits of International during this period?

A. Steadily decreased to the point where in 1954 we did an \$8,000,000 volume for \$11,000 net profit.

Q. During this period what position did the stockholders take as to dividends?

A. One stockholder in particular was more or less blinded to the fact that we had little or no money to work with. He felt that we could continue to pay dividends, he insisted, and he was backed up by the attorney for the company and finally his sister went along, and we did pay dividends in those four years, which contributed to our deficit. That was contrary to my best judgment and against my wishes but——

Q. Did you express your judgment and your wishes to 2414 the stockholders?

A. Over and over and over again.

Q. Now, did there come a time when the owners, the stockholders of the company, expressed a desire to sell?

A. They had a desire to sell for some time, if they were not able to get dividends. They would have liked to have kept the company if they could have got dividends. In lieu of not getting the dividends, they were willing to sell the company.

Q. What, if anything, did they do about that?

A. On the instructions of the Board of Directors I talked to Mr. Nicht on the telephone I think about the middle of 1952, and told him in this way, they were not anxious to sell, but if King Features wanted to buy—I mentioned this to Nicht because he was so anxious that the people uptown buy the plant——

Q. You say "the people uptown"?

A. The general management.

Q. The top management of Hearst?

A. That if he wanted the plant the directors would sell it to him for \$1,000,000 approximately.

Q. Now, what, if anything, was the King response to that?

A. Mr. Nicht's response was, crudely speaking, a horse laugh.

Q. And did he state whether or not the Hearst people 2415 had rejected the offer?

A. They rejected constantly his importunities to buy the plant. He didn't tell me they rejected that offer and I said, "Well, can the directors see the general management?" He said he would make arrangements.

Q. Can the directors of International——

A. See the general management.

Q. Of Hearst?

A. Of Hearst. He arranged such a meeting.

Q. Did you attend such a meeting?

A. I attended the meeting.

Q. What was the outcome of that meeting?

A. They didn't want to have any part of it.

Q. Hearst?

A. Hearst didn't want to have any part of it.

Q. Did they express any reason for not wanting to buy it?

A. They didn't want to have any part of a printing plant, period.

Q. Who on behalf of Hearst expressed——

A. Mr. Gortatowsky, the general manager; Mr. Lewis who, I think was the treasurer; and possibly—I am not sure—Mr. Marcuson, who is now general manager, who was the financial man at that time.

Q. Was there any discussion about price at that time?

2416 Did they discuss buying at a lower price?

A. They were not interested in the plant.

Q. Subsequent to that meeting did you have any further discussions with Mr. Nicht about Hearst buying the plant?

A. Constantly.

Q. And what was his——

A. Mr. Nicht told me that he took it up with the people uptown once more. He, I recall, gave me the contents of a letter which Mr. Greene, the general manager of King Features Syndicate, had given to him, in which Mr. Greene said that some of the people uptown or one of the persons uptown stated it was his knowledge that Woolworth's sold 50,000,000 gumdrops a year and never made one and made money, that as far as he was concerned, the printing business was a headache, but if your people want to talk further about it, I will discuss it.

Q. Well, your discussions with Nicht proved fruitless, as far as any sale?

A. Right.

Q. Did Nicht ever make any suggestions to you at any time that you sell the company to anyone else?

A. No.

Q. Did he ever suggest that you sell the company to

2417 Greater Buffalo?

A. No.

Q. Did there come a time when you met Walter Koessler?

A. Yes.

Q. When was that?

A. It is my recollection—this is thirteen years ago—it is my recollection it was in December of 1954.

Q. December of 1954?

A. Yes.

Q. And you had never met him before?

A. No.

Q. And how did that meeting come about?

A. I expressed a desire to meet him. I expressed my desire to Mr. Nicht, and Mr. Nicht said if I wished to meet him he would make the arrangements.

Q. In other words, you suggested that you meet—

A. Yes.

Q. —Mr. Koessler?

A. Yes.

Q. Did you state any reason why you wanted to meet him?

A. I didn't state any reason, but I will state my reason now.

Q. No. There did come a time when you met with Mr. Koessler, is that right?

A. Right.

2418 Q. At the time you have described?

A. Yes.

Q. And what was the substance of your conversation with him at your first meeting?

A. We talked shop, talked about mechanics, talked about unions, talked about newsprint, we talked about the south, and in the discussion of mechanics, I brought up the matter of pre-registry. I didn't think he was going to tell me how it was done, but I brought it up just the same, and I gave him the impression, the knowledge, I think, we were not doing so well.

Q. And did you have further meetings with Mr. Koessler?

A. Yes. At that first meeting he said he thought that the business could be made profitable with his methods and that perhaps he might be interested in investing in it if the price wasn't too high.

Q. Now, was there any discussion of price at your first meeting?

A. Not in exact dollars and cents. His idea was that if the net worth wasn't too high he might be interested in investing at that figure.

Q. At that time did you know what that figure was?

A. I didn't know at that time what the figure was.

Q. Subsequently did you meet with Mr. Koessler?

A. I checked the net worth and came to Buffalo and
2419 asked him to meet me at the Statler.

Q. This would be some time early in 1955?

A. Early in 1955. Exactly what month, I don't remember.

Q. What was the substance of your—

A. I told him the net worth was approximately \$595,000. He said on that basis he thought that his methods could make the company pay, would the owners be interested. I said, "I don't know, I will have to take it up with them."

Q. Now, during the course of that day did you have rather protracted discussions with him with respect to what your machinery was?

A. I gave him a good idea of what the machinery was at that time.

Q. Now, did you discuss with him at that time the status of your printing contract with King?

A. I told him just about what—I gave him the whole picture.

Q. And the printing contract was terminable in six months?

A. Six months.

Q. And during the course of that meeting he advised you that he was interested in acquiring the stock of the company at the net worth figure you had given him?

A. That is right.

Q. Did Mr. Nicht have any part of any of these
2420 negotiations?

A. No part in the negotiations whatsoever. He arranged for me to Mr. Koessler, and other than that he had no part in the negotiations.

Q. He was not present during the negotiations?

A. No.

Q. Was he advised of the details of the negotiations?

A. In a general way, I felt it was a matter of courtesy, that there was something doing, that Mr. Koessler might buy the company if the stockholders were willing to sell, and I would have to approach the stockholders.

Q. Did he express to you, at the time you informed him of that, any approval or disapproval?

A. I have no recollection of any comment he made whatsoever.

Q. Subsequent to this meeting with Mr. Koessler in Buffalo did you contract the stockholders?

A. I did, not by phone, not by letter, I went directly to their homes.

Q. One of them lived where?

A. The sister lived in Sarasota, Florida; the brother lived in Havana.

Q. And you called on each of them and discussed the proposition?

A. Yes, I called on each and discussed the proposition, and I discussed the proposition in the presence of the
2421 brother's lawyer.

Q. Now, did you at that time know of any other possible purchaser for this company?

A. No, I didn't.

Q. From your knowledge of the industry, did you know of any company in the industry that would have been a possible purchaser?

A. No, I did not.

Q. Did you recommend to the stockholders they accept this proposition?

A. I did.

Q. For what reason?

A. Because I thought it was best for them. We were at a point where we had no working capital, we had made only \$11,000 on an \$8,000,000 business. They wanted money, there was no chance to get it out of dividends. I had in mind the employees, some 250 or 300, who had spent a good part of their lives with me, members of my family who worked there, and myself. I thought the only future for International Color Printing lay in a sale to Greater Buffalo.

Q. Now, did there come a time—strike it out. Were these negotiations you had with Mr. Koessler protracted?

A. The negotiations with Mr. Koessler were not protracted, but the total negotiations before consummation were
2422 protracted some what because I had to travel back and forth to Sarasota and Havana, and I went through an operation at that time, and just prior to the operation I was not able to travel, and immediately after I was not able to travel. So while the time involved was about six months, there were really not very many meetings.

Q. And I take it the stockholders did not agree at first?

A. No, they decided to think it over.

Q. Now, there came a time when the offer was accepted and the stock was sold?

A. That is right.

Q. When was that?

A. June 23rd or 25th, 1955.

Q. And where did that take place?

A. In Buffalo.

Q. Any specific place in Buffalo?

A. I believe it was in the office of a man named Surdam.

Q. Arthur Surdam, the accountant?

A. I think he was a lawyer or tax accountant.

Q. And the stock was acquired for this net worth figure, paid in cash?

A. The stock was actually acquired for about \$20,000 less than the net worth. I can't remember why the difference, except there was a \$35,000 note to be paid to Mrs.—I don't remember whether she was Scofield or Von Lochorst at that time. There was a difference of \$20,000, I can't quite explain that.

Q. Now, you have testified that Mr. Nicht had no part, played no part in those negotiations?

A. No.

Q. At the time this company, International, was acquired by Greater Buffalo, did International have a contract with King other than the six months, the contract that they had been working on that was terminable in six months?

A. There was no contract other than the contract terminable in six months.

Q. And do you know of anything that either King or Mr. Nicht could have done to prevent the sale of International to Greater Buffalo?

A. Mr. Nicht was powerless to prevent the sale of International to Greater Buffalo.

Q. Except by buying it himself?

A. Except by buying it himself.

Q. Hearst had refused to do that?

A. Yes, that is correct.

Q. Now, directing your attention to the matter of a southern plant; when for the first time did you become interested in the development of a southern plant?

2424 A. I don't know the exact year but in the thirties.

Q. And at that time did you make some investigation of it?

A. I was interested primarily at that time in putting up a plant at a port because we could get a reduction of about \$1.00 a ton on newsprint at a port.

Q. Where?

A. A port, p-o-r-t, a seaport. Therefore, I concentrated my investigation in Newport News, Norfolk and Richmond. Richmond isn't a seaport, but it is on the James River, and it was entitled to a seaport rate. I studied buildings in all three places. I studied the transportation costs from those three cities to all the area we were serving. I discussed the matter with union officials, international officer Joseph Orr and business agent Charles Ernst. I came back to Mr. Nicht finally—it was at his importuning I was doing this—I came back and said that we were agreeable to go ahead with the plant in Richmond.

Q. What happened to that?

A. Unfortunately, we could not get the money together. In the meantime, shortly after, Mr. Nicht told me that he had signed new contracts in the south based on the transportation rate from Richmond and, therefore, would expect us to absorb the difference in transportation between Richmond and
2425 Wilkes-Barre to points in the south. It amounted to approximately \$500.00 a week and we did that until the day—or after we sold the plant to Greater Buffalo.

Q. That first investigation came to naught except it cost you some money?

A. That is right.

Q. Now, directing your attention to the period from 1950 to 1955; was there a renewed interest upon the part of King Features in a southern plant?

A. I wouldn't call it renewed, I would say it never subsided on the part of Mr. Nicht. Oh, you mean as against Richmond?

Q. No, no—

A. It never subsided, it was constant, week after week.

Q. And directing your attention to the period from 1950 to 1954; did you have a series of discussions with Mr. Nicht with respect to the erection of a southern plant?

A. I did.

Q. And was the financing of such a plant discussed?

A. There was talk in the Hearst general office about interesting some Boston banker in advancing us a loan, provided we could give a sufficiently satisfactory balance sheet and a sufficient satisfactory prospectus to enable the banker to think, consider the matter was worthwhile. That matter wasn't followed through.

Q. In other words, you never got any loan; and did you point out to Mr. Nicht the difficulties, the impossibility of International financing any such plant?

A. By telephone, verbal conversation, and by letter, I told him over and over again that without a satisfactory contract which would enable us to make a sufficient profit to pay off a loan within a reasonable period of time, we could not commit ourselves to building a plant in the south. I had in mind the burning we got in Richmond.

Q. In other words, you had been burned once in Richmond?

A. Yes.

Q. Let me ask you a flat question. At the time of the acquisition of the stock of International by Greater Buffalo, did International have any commitment of any kind to build a plant in Sylacauga?

A. Never. International never had a commitment of any kind at any time to build a plant in Sylacauga.

Q. Did they have the means to finance the building?

A. Did not have the means.

Q. Was Hearst willing to finance the building?

A. Hearst was not.

Q. You had over this period made certain investigations in Sylacauga?

2427 A. The matter of putting a plant in the deep south came up after we learned that newsprint could be made in the south and newsprint might be obtainable in the south, and this came—the matter of Sylacauga seriously was considered following a visit which I made to the Coosa River Newsprint Company some time in 1954.

Q. Now, when you talked to the Coosa River people in 1954 did you know they had also talked to other printers?

A. At the time, no. I learned later they had.

Q. Among the people they talked to was Mr. Koessler?

A. That is right.

Q. Did you learn that among other people that Coosa had

discussed the matter of a plant in the Sylacauga area was Walter Koessler?

Mr. BERNSTEIN: I object to the question on the grounds the answer obviously would be hearsay.

The WITNESS: It would not be hearsay.

The COURT: Wait a minute——

The WITNESS: Not necessarily.

The COURT: Overruled.

Mr. BERNSTEIN: Could we fix the question to the time in 1954 when he was talking to Coosa River, your Honor,
2428 on the grounds that the witness is apparently testifying from what he had heard on direct examination and basing his information on Mr. Koessler's testimony, not on his information as of 1954 before Greater Buffalo acquired the plant.

The COURT: Mr. Moore, you can fix the time for us.

By Mr. MOORE:

Q. When did you learn that the Coosa River people had discussed the matter of a Sylacauga plant with other printers?

A. Not too long after I visited there. I learned it directly from Mr. Walker——

Q. Mr. Watt.

A. The sales manager of Coosa River.

Q. He is the man you talked to?

A. Yes.

Q. He told you he talked to other printers?

A. Yes.

Q. Did he identify the printers?

A. He identified Walter Koessler and Eastern Color
2429 and others.

Q. In other words, Watt was around looking for a printing plant to use up his paper?

A. That is right.

The COURT: When would that have been that Watt passed that to you?

The WITNESS: Somewhere between the middle of 1954 and the fall of 1954. I don't remember the exact date. I think I was in Sylacauga and I saw them possibly in the spring of 1954.

The COURT: Had Mr. Koessler made a feeler toward you at that time?

The WITNESS Not one word. I never heard a word from Mr. Koessler until the day I met him in New York in December 1954. Never met him, never had any word from him.

By Mr. MOORE:

Q. Now, subsequent to the acquisition of the stock of International by Greater Buffalo, did you, at the direction of Greater Buffalo, make an investigation of the possibility of establishing a southern printing plant for Greater Buffalo?

2430 A. I did.

Q. And among other places, where did you go?

A. I went to Chattanooga, Knoxville, Nashville, Cleveland, Tennessee, and I sent some of our men to Atlanta and other places.

Q. Now, did you make a report to Walter Koessler about this?

A. I made a report that I thought Sylacauga still was the best place.

Q. After your investigation?

A. Yes.

Q. This was when, 1956?

A. I would think so, yes.

Q. And what was Mr. Koessler's recommendation as to the location of a southern printing plant by Greater Buffalo?

A. His idea was that it should be Chattanooga or Nashville, somewhere near the Bullwater. For other reasons I think he deferred to my opinion on that particular occasion.

Q. In other words, it was his idea that the plant should be located near the Bullwater?

A. I think I was influenced somewhat by the fact that I had met the people, they had made some effort to get us down
2431 there, and anyway the choice was made I think against Mr. Koessler's best judgment.

Q. The decision was made by Greater Buffalo to build in Sylacauga?

A. That is right.

Q. Now, how was the construction of the Sylacauga plant financed, do you know?

A. Paid for entirely by Greater Buffalo.

Q. By Greater Buffalo?

A. Yes.

Q. And you, yourself, had nothing to do with the erection of the plant?

A. In the beginning, yes, we had something to do with the erection under their supervision.

Mr. BERNSTEIN: May I have the answer read back?
(Thereupon the last answer was read by reporter.)

By Mr. MOORE:

Q. Well, the plans of the plant were essentially the plans used at Lufkin?

A. Practically a duplication of the Lufkin plant. The press was a duplication of the 5 plate wide press which had been built here in Buffalo. All important details were handled and
2432 improved or endorsed by Greater Buffalo.

Q. Now, directing your attention to the International-King printing contract; did you negotiate the contract between King and International that was entered into in 1955?

A. I did.

Q. And with whom did you negotiate it?

A. Mr. Nicht.

Q. And when was the contract signed by you?

A. Signed by me August 19, 1955, to the best of my recollection.

Q. When was it signed by—

A. —September 1, 1955—

Q. —Mr. Nicht?

A. To the best of my recollection. I received it on September 2nd.

Q. Now, did Mr. Koessler take any part in the negotiation of this contract?

A. Only to the extent that I should do as well as I could.

Q. You had been in the course of negotiating a new contract with Mr. Nicht prior to the time Greater Buffalo acquired the company?

A. That is right.

Q. And did those negotiations continue afterward, after the acquisition?

2433 A. Yes, they continued up to practically the day I signed the contract.

Q. Now, Mr. Bernstein in various of his arguments here has made the statement about the contract containing an escalation clause. Will you state whether or not the contract entered into by International and King in August and September of 1955 had any escalation clause that was any different than the clause you worked under with King for the past many years?

A. The average income received from King per thousand for the week prior to the contract, prior to the effective date of the contract, July 30th, was exactly the same as the average income from King for the next full week, full release, following the effective date of the contract. Now, it so happens that the effective date was July 30th, but the contract was not signed by me until August 19th, and not signed by Mr. Nicht until September 1st, therefore I made a comparison of the income from King for all of our work, overall, per thousand, for a week in October and November with a week earlier in the year, and I find there was no escalation clause and no sweetening of the pot, as Mr. Bernstein claimed.

Q. As a matter of fact, you had always worked on an agreement with King whereby the prices were changed
2434 when you had an increase in labor costs, is that right?

A. That is right.

Q. And the contract with King provided for an increase when there was an increase in newsprint?

A. That is correct.

Q. These same conditions prevailed in the new contract?

A. That is correct.

Q. Basically the terms and conditions of the contract executed in August and September of 1955 were substantially the same terms and conditions of your contract with King over the previous years?

A. That is correct.

Q. There was no sweetening of the pot?

A. There was no sweetening of the pot.

Q. Now, directing your attention to the period beginning July 1, 1955 and continuing to date; will you state what, if any, changes have been made in the facilities of the International plant?

A. Within two or three years following the purchase by Greater Buffalo, with use of their ideas and machinery furnished by them, it became possible for us to put third pages, sixth pages, quarter pages, half pages, on the press separately.

2435 But most of all, and most important of all, their pre-registry system made it possible for us to increase our net production per press hour from approximately 16,000 or a little better, prior to the date of the sale, to 20,200 for the first three months of this year; a gain of 22% in production per press hour.

Q. Without going into detail, you knew of the existence of what you call preregistry?

Q. Did you know how the preregistry was effected?

Q. Did you know how preregistry was effected?

A. I did not.

Q. This was one of the things you had been unable to find out?

A. Yes, correct.

Q. That had been installed at International——

A. ——That is right.

Q. Under the direction of Greater Buffalo?

A. That is right.

Q. Now——

The COURT: Don't the printers know how it works?

The WITNESS: No. They know how it works after Buffalo put the system in, they knew how to use it, they didn't know how to preregister prior to that, no.

2436 The COURT: I wondered how you kept such a thing secret.

The WITNESS: Let me explain——

The COURT: Don't tell me about it, that is a trade secret.

The WITNESS: It is not a flick of the wrist, it is a number of machines.

The COURT: I don't want to know about it.

By Mr. MOORE:

Q. This is a change that takes a great deal of time and work?

A. It is an overall change in the whole stereotype equipment and in the whole press equipment. It is not a flick of the wrist.

Q. Now, you were in court some five years ago when we took testimony concerning the matter of the preliminary injunction in this case?

A. Yes.

Q. And you recall the claim advanced by the Government that the opening of a plant in Sylacauga would result in stripping the plant of International and rendering it into a shell?

A. That is right.

Q. Well, tell us what has happened at International
2437 in the——

A. The average weekly payroll, exclusive of fringe benefits, prior to the sale was \$31,000 per week. The average weekly payroll, exclusive of fringe benefits, for the first three

months of this year was \$49,000. There was an increase in payroll from \$31,000 to \$49,000.

Q. What about production?

A. Production has increased from an average of 23,400,000 sections per week, prior to the sale, to 31,000,000 in the first three months of this year.

Q. Those are comic supplements?

A. Comic supplements and commercials, all four-page orders.

Q. In the meantime, certain runs that were printed by International prior to the opening of Sylacauga have been moved to Sylacauga?

A. That is right.

Q. How much business is that?

A. I think it totals six or seven million four-page sections.

Q. And this has been made up—what makes up for the business?

A. The commercial work primarily. Not that we got that much extra commercial work, Buffalo got a great amount 2438 of commercial work, and in order to take care of it, they ship some of the comic printing to us. We do a considerable amount of commercial work, and right now we are doing Sears, Roebuck and Woolworth.

Q. Your comic supplement printing, the increase in that, comes from Greater Buffalo?

A. That is right.

Q. Your commercial work comes from Greater Buffalo?

A. Greater Buffalo, and in the meantime, I might point out, we lost 7,000,000 due to the closing of newspapers in New York City, which was certainly not our fault.

Q. You are still—

A. We are still far ahead of what we were in 1955.

Q. What happened to the working capital position of the company?

A. From a deficit of approximately \$100,000 prior to the date of sale to Greater Buffalo, the working capital has increased to approximately \$1,400,000.

Q. What has happened to the net worth of the company?

A. The net worth hasn't increased much more than that. All of our net worth is liquid, practically liquid.

Q. In other words, it is up over a million?

A. It is about \$1,500,000.

Q. Now, directing your attention to the present time; do you know how much business Southern Color Printing 2439 is doing?

A. Yes.

Q. How much business are they doing?

A. I would say about \$3,300,000.

Q. How much were they doing in 1955?

A. About \$600,000.

Q. Do you know what happened to the color comic supplement printing of Eastern Color?

A. Eastern Color Printing Company since 1955 has added several single width presses and are now engaged in installing a new \$1,000,000 press completed by Hoe and Company. I got the price of the press directly from Hoe, and that is without installation.

Q. Do you know what has happened to Acme?

A. Acme since 1955 has moved into a new building and added new equipment. If I can go back to Southern Color, I point out that in the meantime the parent company has erected a brand new newspaper building and has purchased a television station for something like \$8,000,000, according to the newspaper reports.

Q. Well, you have been in this industry all your life; can you name one person or one corporation whom, in your opinion, was harmed in any respect by the acquisition of International Color by Greater Buffalo?

Mr. BERNSTEIN: I object.

2440 The COURT: Overruled, I will hear your opinion.

The WITNESS: I can't name any single corporation or individual. I might say that Mr. Hornady, who instigated the investigation in the first place—

Mr. BERNSTEIN: I object to this.

Mr. MOORE: Never mind Mr. Hornady.

The COURT: Tell us about Hornady, how is he doing?

The WITNESS: Mr. Hornady tells me he is doing very well, he is selling more features than ever. He works for two syndicates. He resides in a house on a golf course in Westchester County, he spends half of his time there instead of traveling. He has done very well.

Mr. MOORE: You may ask.

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. On Southern Color Printing, you say you know the volume of printing they do now?

A. Yes, sir.

Q. Where did you get that information?

A. Whenever we lose a run I check with the newspapers to find out where it went, and I ask Mr. Smith himself about certain runs, I ask Jack Hornady about certain runs, I ask King Features about runs. So I have a very good general idea of what they are doing, and Hornady and Smith both told me that is approximately the amount they are doing.

Q. Are they your competitors now?

A. Not mine.

Q. Are they International's competitors?

A. No.

Q. Greater Buffalo's competitors?

A. Yes.

Q. Are you in frequent communication with Mr. Hornady?

A. I'm a very friendly man, yes.

Q. You are in frequent communication with him?

A. I meet him at the publishers conventions.

Q. Do you discuss which run you are going to have, which run he is going to have?

A. I talk to him about general conditions, yes.

Q. Now, going into the Hearst organization at the time prior to the acquisition by Greater Buffalo of International stock; did you ever have any dealings with Mr. Berlin or Mr. Gortatowsky?

A. I never met Mr. Berlin.

Q. Do you know what position he had?

2442 A. He is the top man.

Q. What was the position of Mr. Nicht in the Hearst organization?

A. Mr. Nicht was——

Q. In relationship to the top of the organization?

A. Nicht was sales manager of King Features. He was also on the Board of Directors of one of the Hearst corporations.

Q. King Features is a division of Hearst?

A. Yes, he was on the Board of Directors of one of the corporations, I don't know which one.

Q. You don't know which one?

A. No.

Q. Did he have to get the approval of Mr. Gortatowsky or Mr. Berlin or Mr. Greene for any major moves that he would make as far as International was concerned?

A. I think so.

Q. And—

The COURT: What moves are you referring to? What move is that?

Mr. BERNSTEIN: Purchase of the plant, any major arrangement with International.

By Mr. BERNSTEIN:

Q. He did not have the say, as far as that is concerned?

2443 A. Not as far as I know. I know he didn't, he told me many times that he was very disappointed that the people uptown would not approve of his plans to buy the plant.

Q. Now, Mr. Nicht was constantly trying to get—strike that out. Do you know whether or not International was printing the color comic supplements for most of the Hearst newspapers?

A. Not any of the Hearst newspapers.

Q. You were printing—your customer was King, was it not?

A. That is right.

Q. Do you know whether or not King requested International to print for King color comic supplements for most of the Hearst newspapers?

A. I want to take back one thing I said. I said we were not printing for any of the Hearst newspapers. We were printing for the New York Sunday Mirror.

Q. So that am I correct, most of the Hearst newspapers either printed—did they print their own?

A. The Hearst Sunday papers had all of their comics printed in those years in San Francisco and Chicago.

Q. What years?

A. In the years prior to this sale, and they are still having some of them done in San Francisco.

2444 Q. And Mr. Nicht was very anxious to have King Features do that printing, is that correct?

A. That is correct.

Q. Mr. Nicht spoke to you many times about getting that business for King, isn't that correct?

A. Mr. Gortatowsky mentioned it to me frequently, too, that some day he hoped we would print their comics.

Q. When were those occasions you had the conversations with Mr. Gortatowsky?

A. At one time he was the general manager of King Features Syndicate.

Q. And you were dealing with him?

A. No, no, I dealt with Mr. Nicht entirely. If I met Mr. Gortatowsky it was only by accident. I will state one occasion particularly when I met him, it was in Pittsburgh at the installation ceremonial of a new press.

Q. When was that?

A. I don't know.

Q. In any event, at some unspecified time Mr. Gortatowsky, who was a very important official of Hearst, did tell you that he was very anxious to have——

A. He didn't say very anxious.

Q. What did he say?

A. "I hope some day you will be printing our comics."

2445 Q. Who will?

A. Well, International Color Printing.

Q. Will print Hearst comics?

A. Yes.

Q. And did Mr. Nicht do more than just talk about getting King Features to print Hearst comics? Tell us about your visit to the California plant and the survey you made as to whether or not International could use the California equipment?

A. That is right, I did.

Q. Tell us about that?

A. That is all I can tell you. I made a survey, I don't recall the result.

Q. Let's look at some of the memoranda you made at the time.

A. All right.

Mr. BERNSTEIN: Could we have this marked for identification?

The COURT: Go ahead, we will mark it later. Give us the date of it, refer to that.

By Mr. BERNSTEIN:

Q. Look at Document Number 236, August 3, 1953, which is headed "Memorandum——", can you read that?

2446 A. "Memorandum on San Francisco and Chicago color plants."

Q. Would you glance at that memorandum and then tell us if you can identify it, whether or not you prepared that?

A. (Witness examines document.)

Q. Having read the first page, are you able to tell us whether you prepared that, without reading the rest of the document?

A. Yes, sir.

(Thereupon memorandum referred to was marked Plaintiff's Exhibit P-103 for identification.)

Mr. BERNSTEIN: I will offer it in evidence.

The COURT: Any objection?

Mr. MOORE: We haven't seen it.

Mr. BERNSTEIN: I will offer it later.

By Mr. BERNSTEIN:

Q. Do you recall that in August 1953 you met in New York with Mr. Nicht, Mr. Burns and Mr. Pedulla, the business manager of the American Weekly; do you recall that occasion?

A. No, I do not.

2447 Q. Well, isn't it a fact that you did meet with them to obtain American Weekly's prices for printing Portland, Oregon comics?

A. You asked me if I met with them, and I don't recall meeting with them and, therefore, I don't recall what we talked about.

Q. Do you recall that you did make a visit to the Hearst San Francisco plant?

A. I did.

Q. And what was the purpose of that visit?

A. To find out what kind of equipment they had.

Q. For what purpose?

A. For my own knowledge primarily, and to find out what it might be costing them to do their job.

Q. Did you then prepare this memorandum after your visit?

A. The memorandum you showed me, yes.

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. MOORE: May I see it?

(Thereupon documents were marked Plaintiff's Exhibits P-104, P-105 and P-106 for identification.)

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: May P-103 be received in evidence,
2448 your Honor?

The COURT: Yes.

(Thereupon Plaintiff's Exhibit P-103, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I show you P-104 for identification, a paper which appears to be a memorandum to J. J. G., dated September 29, 1954, and I ask you if you can please tell us what that document is?

A. Well, it looks to me like a memorandum from Joe Clinton to me, in which he got together the circulation of Hearst newspapers and then tried to work out some sort of a summary.

Mr. BERNSTEIN: I offer P-104 in evidence.

Mr. MOORE: I don't see the relevance, but I have no objection.

The COURT: You have no objection?

Mr. MOORE: No.

The COURT: Received.

2449 (Thereupon Plaintiff's Exhibit P-104, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-105 marked for identification is a letter from Joseph J. Gorman to Mr. Koessler, Greater Buffalo Press, dated November 20, 1959, and I offer that in evidence.

Mr. MOORE: No objection.

(Thereupon Plaintiff's Exhibit P-105, previously marked for identification, was received and marked in evidence.)

Mr. STEVENS: Would you mind showing these things to me? I realize we are only passengers here, but we would like to see the documents.

Mr. BERNSTEIN: P-106 for identification is a copy of a letter dated March 16, 1953, from Mr. Joseph J. Gorman to Mr. Frank Nicht—

The COURT: Have you a number of things you are going to offer?

Mr. BERNSTEIN: That is all right now.

2450 The COURT: I was going to say offer them. I have to take an arraignment at twelve-thirty, and will you alert them out there that we will get started now. Go ahead.

Mr. MOORE: No objection.

Mr. STEVENS: Objection.

The COURT: Have you offered those?

Mr. BERNSTEIN: I offer them in evidence.

Mr. MOORE: I have no objection.

Mr. STEVENS: We object. We haven't seen them, we don't know what they are.

The COURT: I want you to see them, that is the point I made. Give them to Mr. Stevens. We will now recess until one-thirty, if that suits you. I have a matter here that I am going to take care of.

(Thereupon the Court was in recess at 12:30 P.M.)

2451 (Proceedings resumed, pursuant to recess, commencing at 1:30 P.M.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

Mr. BERNSTEIN: To save time, Your Honor, I offer P-103, 104, 105 and 106 in evidence, as against the Greater Buffalo Press and offer them against NEA subject to connection at the end of the case.

Mr. MOORE: No objection.

Mr. STEVENS: On that basis we have no objection for NEA. (Thereupon Plaintiff's Exhibits P-103 through 106, previously marked for identification, were received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Mr. Gorman, have you had a chance to glance at P-103, 104, 105 and 106?

A. Just fairly glance at them.

Q. They are memoranda—well, take P-106; P-106 is
2452 a letter that you wrote, a report that you gave to Mr. Nicht, is that correct?

A. Yes, sir.

Q. And that was about March—when was it, my date isn't clear?

A. Sixteenth.

Q. 1953?

A. Yes.

Q. Isn't it a fact that you met with Johnny Pedulla and Oscar Bondy a few weeks prior to that report?

A. According to this letter I did. I don't recall meeting them.

Q. Do you know now who Johnny Pedulla and Oscar Bondy is?

A. Oscar Bondy is dead. At that time he was production manager for the Hearst color press in Chicago and San Fran-

cisco. Johnny Pedulla at that time was business manager for the American Weekly, and he is now the manager of the newspaper in Erie, Pennsylvania.

Q. Did the American Weekly have any connection with Hearst at that time?

A. The American Weekly is owned by Hearst.

Q. And was the purpose of your meeting to check on the possibility of adapting the Chicago presses for the kind of work International was then doing for King?

A. One of the purposes, yes.

2453 Q. Was one of the purposes to estimate the cost of printing Hearst's own supplement in the San Francisco plant?

A. Yes, sir.

Q. Was another one of the purposes for estimating the cost of printing Hearst's supplements on present Hearst presses in buildings located in the city where a cheaper labor rate could be obtained?

A. Yes.

Q. Was another purpose to estimate the cost of printing Hearst supplements and other supplements on rebuilt presses in a building located in a city where a cheaper labor rate might be obtained?

A. Yes, sir.

Q. Was the purpose at that time—or did you have under consideration at that time International using those presses to do the printing for King?

A. No, sir.

Q. I invite your attention to page three, the last paragraph—no, page four, the last paragraph. You say: "At an earlier date I agreed to estimate the cost of printing Hearst's own supplements, also other supplements in the San Francisco plant. I have not done so because it would be a waste of time. This company or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence in the efficiency in the Hearst production staff now handling the San Francisco plant." When you talk about "we" were you talking about International?

A. Talking about me.

Q. What was under consideration then?

A. Nothing to do with International, except that I was acting as an emissary for Mr. Nicht to go and find out what I could about the Hearst operation.

Q. For what purpose?

A. Because he was thinking about the—hoping to be able to take the plant over, have Hearst run it, or do all of those four things you were talking about. You just outlined the purposes.

Q. He was giving serious consideration to getting the Hearst business?

Mr. MOORE: By "he" you mean Nicht?

Mr. BERNSTEIN: Nicht.

The WITNESS: Getting Hearst's additional business for what, for who?

2455 By Mr. BERNSTEIN:

Q. For King?

A. What he had in mind doing was to operate the Hearst plant and King get the profit.

Q. Yes.

A. Take the profit out of the Hearst organization and give it to King, and King would give it back to Hearst again. It was strictly a silly idea.

Q. And you told him you didn't think it was profitable to do it that way?

A. I didn't think it was profitable.

Q. On P-103, August 3, 1953, you wrote another memorandum on this subject, is that correct?

A. Yes, sir.

Q. How much time did you spend in all on this project?

A. A ridiculously small amount of time for the job involved; one day on each press.

Q. You went to Chicago and San Francisco?

A. That is right.

Q. And who paid those expenses?

A. International Color Printing.

Q. You were then running the International plant?

A. That is right.

Q. You are still running it?

A. That is right.

2456 Q. You are in full charge of it?

A. That is right.

Q. You always have been?

A. Yes.

Q. When we talk about any printing at International, we mean printing that you supervised, controlled and managed?

A. Yes, sir.

Q. Now, P-104 is a memorandum to you from Mr. Clinton. Who is Mr. Clinton?

A. He was an assistant production manager in Wilkes-Barre at that time. He is now manager for the Sylacauga plant.

Q. And do you have any current supervision over the Sylacauga plant?

A. No connection whatsoever.

Q. When was the last time you were there?

A. I was there on a visit about a year ago, maybe less than a year ago, to visit his home, prior to the confirmation—or the graduation of his daughter and the confirmation of his son for whom I was sponsor.

Mr. BERNSTEIN: In the event there might be some confusion in the record; might the record show that P-103, 2457 104, 105 and 106 are in evidence against Greater Buffalo and are in evidence against NEA only if the Court later finds there was a conspiracy involved.

Mr. STEVENS: I should add——

Mr. MOORE: Reminded me—really those documents should only be admissible against NEA if there is found to have been a conspiracy involving NEA and those are in furtherance of the conspiracy, not just per se.

The COURT: I suppose you are offering them as some possible proof of a conspiracy are you?

Mr. BERNSTEIN: In P-106, dated March 16, 1953, Mr. Gorman states to Mr. Nicht on page two: "Because I think I can give you the information with fewer words this way, I am going to use the question and answer form. It is easier for me that way and I hope you will bear with me." "What is the present equipment in San Francisco?" Then you describe four six deck

2458 Hoe color presses geared for at least 36,000 per hour and running at 32,000 per hour and then there is another sentence and you ask this question: "Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing?" "No, they are not, for the reason that we require four clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the

sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom four to allow us to print five page standards; sixteen page tabloids, et cetera."

By Mr. BERNSTEIN:

Q. Isn't it a fact at that time International's plant required four clips on the inside of each cylinder to take care of half plates?

A. Yes.

2459 Q. When you say "we require" you were talking about International?

A. Yes.

Q. Then——

A. That did not mean we were going to run the Chicago plant.

Q. You were talking about International's ability vis-a-vis the adaptability of the San Francisco and the Chicago plants to use the same kind of equipment and same process, is that correct?

A. Yes.

Q. Do you recall now what Mr. Nicht asked you to go out there to do? Is it just in this memorandum?

A. Doesn't it state it in the memorandum?

Q. The memorandum speaks for itself, that is, that has the full transaction?

A. Yes.

Q. On page four you ask this question: "Has our machinist examined Chicago presses as promised?" The answer is: "Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible, but the cost would be tremendous." Did you send anybody else out to Chicago, to the Chicago plant, except that machinist?

2460 A. I don't recall sending him. Apparently I did, but I don't recall.

Q. Now, this was before Greater Buffalo purchased the stock of International, and there you were visiting the Hearst plant and, I believe you testified in answer to Mr. Moore's question, that during that same period of time prior to Greater Buffalo's acquisition of International you visited the plants of every one of your other competitors, is that correct?

A. I didn't say that, I said during the forty years that I was in business.

Q. Let's narrow it down; how about during the period prior to 1955, June 16th?

A. My memory isn't that good, I haven't any idea of what plants I visited in that period.

Q. You do remember that in 1933 you visited the Greater Buffalo plant clandestinely?

A. When you get into the Greater Buffalo plant it is something you never forget. That was approximately 1933.

Q. 1933?

A. Approximately. It might have been 1934, 1935; in the thirties.

Q. Were you there again before December 1954?

2461 A. I was in the Grote Street plant before December, 1954.

Q. And after 1933?

A. Yes, somewhere in the forties.

Q. Somewhere in the forties?

A. Yes.

Q. And what was the purpose of your visit?

A. Well, sometimes they call me Sneaky Joe.

Q. Are you?

A. Sometimes.

Q. You are a sneak?

A. I sneak in, yes.

Q. Are you a sneak?

A. No, I'm not a sneak.

Q. Did you intend to sneak at that time?

A. No, I walked in directly.

Q. What was the purpose of your visit to that plant?

A. To find out what I could about how a better printer operated.

Q. Why didn't you ask Mr. Koessler if you could go through it?

A. Mr. Koessler had the reputation of being a rugged individual who would have thrown me out.

Q. Why?

A. Ask him.

Q. I ask you?

2462 A. Because he didn't want somebody learning the secrets that he had built up over a period of years, and I don't blame him.

Q. Were you a competitor of his at the time?

A. No, King was, I was working for King. I was a competitor, production-wise.

Q. He was afraid, you feared, that competitive information might be available to King Features through you, is that correct?

A. Put that again. You mixed up your sentence.

(Thereupon the last question was read by reporter.)

The WITNESS: No, I don't make any sense out of that.

Mr. BERNSTEIN: You don't understand the question?

Mr. RAICHEL: Neither do I.

The COURT: You were down to get the information for King?

The WITNESS: I was there to get the information for myself.

The COURT: Wasn't it true that this man Nicht was hounding you because you couldn't get the stuff out like Greater Buffalo?

2463 The WITNESS: I was down to get the information for myself as to how to improve flexibility so that he would stop hounding me.

The COURT: That was your mission?

The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. You referred to P-23 in evidence, which is the contract between International and King that you had negotiated, is that correct?

A. Yes, sir.

Q. And you stated that you signed that contract on what date?

A. August 19th.

Q. I invite your attention to Schedule A of that contract, which is the rate schedule——

A. Yes, sir.

Q. —That is part of the contract that specifies the prices, isn't it?

A. Yes, sir.

Q. That is dated June 16, 1955?

A. May I read the first paragraph?

Q. All right.

2464 A. It is dated June 16, 1955——

Q. Is that correct?

A. The first paragraph reads: "In accordance with the provisions of Paragraph Seventh, Subdivision A, to agreement between King Features Syndicate and International Color Printing Company dated the thirtieth day of July, 1955, the following rates shall apply for each 1,000 four-page standard size supplements", in other words, the date the contract became effective was July 30, 1955, and not June 16, 1955.

Q. Are you a lawyer, Mr. Gorman?

A. You know I'm not.

Q. And on the first page of P-23, the second paragraph, you say to Mr. Nicht: "I would like to point out that in Section A of Article 7, Exhibit A is referred to as being dated June 16, 1955." Why was the date June 16, 1955 selected?

A. I have no idea.

Q. Well, isn't it a fact that you had negotiated the amounts of the rates with Mr. Nicht on or before June 16, 1955?

A. I don't know anything about June 16th, why the date got on there, I don't know. I will tell you what I think it means.

Q. I don't want to hear that. We will be able to
2465 determine the legal effect of this document. I want to know from you how long your negotiations with Mr. Nicht over the rate schedule had occurred that ultimately led to the August 19, 1955 agreement?

A. Probably six months, or longer.

Q. And did there come a time when you had reached a tentative understanding as to what the rates would be?

A. Yes, sir.

Q. During that period of time?

A. Yes, sir.

Q. Was that prior to the signed portion of the agreement, August 19, 1955?

A. Yes.

Mr. BERNSTEIN: I offer.

The WITNESS: May I add——

Mr. BERNSTEIN: Just a minute, you will have opportunity for re-direct. There is no pending question.

The COURT: Is that part of the answer that you feel you must make?

The WITNESS: Yes, sir. There were further changes after June—after July 30th.

The COURT: Did you offer something in evidence?

Mr. BERNSTEIN: I offer P-4 in evidence. P-4 is the 2466 agreement dated April 28, 1955, between International Color and King Features Syndicate.

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: It is offered against NEA subject in connection.

The COURT: Received.

Mr. STEVENS: We object.

(Thereupon Plaintiff's Exhibit P-4, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer P-7 in evidence. It is a letter signed by Mr. Gorman, to King Features Syndicate, dated June 2, 1940.

Mr. MOORE: I have no objection.

Mr. BERNSTEIN: It is offered against NEA subject in connection.

Mr. STEVENS: We object.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-7, previously marked for identification, was received and marked in evidence.)

2467 Mr. BERNSTEIN: May the record show that P-4 is in evidence, your Honor?

The COURT: Yes. What is that 1940 document?

Mr. BERNSTEIN: The witness testified on direct examination as to the content of his agreements with King over the years and what the terms were, when they expired. He was relying on his recollection, and I believe the best evidence rule is to go to the documents in evidence, and Exhibits P-2 through P-6. P-2 is the original agreement between King and International dated September 4, 1930, and all the other documents are extensions of the agreements.

The WITNESS: Pardon me—

Mr. BERNSTEIN: There is no pending question, Mr. Gorman.

Mr. RAICHLE: He wanted to correct some misapprehension you were making. Don't you welcome that?

The WITNESS: I think there was an earlier agreement than that.

2468 The COURT: What was the area you are talking about

The WITNESS: He said the agreement, the first agreement was in 1930. I think there was an earlier one than that.

Mr. BERNSTEIN: I offer P-53 for identification in evidence as against Greater Buffalo and against NEA subject to later connection. It is a document dated May 26, 1954, signed by Mr. Gorman, and it is a report on the possibilities of a color printing plant in or near Birmingham.

Mr STEVENS: Objection.

Mr. BERNSTEIN: It has been identified, not received in evidence. It is not marked in evidence.

The COURT: You are offering it in evidence?

Mr. MOORE: We have no objection.

Mr. STEVENS: We object.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-53, previously marked for identification, was received and marked in evidence.)

2469 By Mr. BERNSTEIN:

Q. The last paragraph of P-53 in evidence, Mr. Gorman, states: "It may be that the owners of ICP——"—which is an abbreviation for International Color Press— "—will not be interested in a southeastern proposition, but I am convinced that something will have to be done to guard our southern flank against any encroachment by Lufkin." What southern flank were you referring to?

A. The western part of the deep south.

Q. And were you concerned that the Lufkin plant contemplated by Greater Buffalo would take business away from you in that area?

A. I was concerned they would take it away from King Features.

Q. And if they took it away from King, King wouldn't be able to put it in Wilkes-Barre?

A. I presume so, if they took it.

Q. Wilkes-Barre would lose revenue?

A. Yes.

Q. So you were concerned about competition from the Lufkin plant, is that correct?

A. I was concerned about King Features competition from the Lufkin plant.

2470 Q. Regardless, you, Joseph J. Gorman, were concerned about competition from the Lufkin plant, is that correct?

A. I said King Features was concerned, therefore I was.

Q. King Features is an inanimate object——

A. Never to me.

Q. Was Joseph J. Gorman interested in competition from the Lufkin plant?

A. No.

Mr. MOORE: I object to the question on the grounds it is argumentative. It has been answered three times. Counsel can make his argument about competition in a brief.

The COURT: I think he definitely outlined his concern, he would be out of business. He had only a few scraps of other things, it was life or death.

Mr. BERNSTEIN: The only reason I press the question is that this witness has stated categorically, as an expert, they were not in competition. I am trying to demonstrate that that is a conclusion, that he has no basis for it, he will not——

2471 The COURT: He is a printer, his principal is a competitor, and without his principal being successful, he is not successful.

Mr. BERNSTEIN: Nonetheless the witness was asked whether he, personally, as an individual, gave consideration to that. He is evading the answer to that question. For that reason I press it.

Mr. MOORE: I object to the characterization that he is evading the answer. He answered it twice. Counsel doesn't like his answer. Counsel is testifying as to his expertise as to what competition is. I suggest he put it in a brief and stop arguing with the witness.

The COURT: It seems to me we are just parrying back and forth. This man, who is not a lawyer, although that may be an advantage, has told you the best version he has of his concern all the way down the line. It seems to me this is argument you are going to make as to what was truly the picture from your point of view. Let's go on with another question.

Mr. BERNSTEIN: I offer P-56 in evidence. P-56 for identification is a contract between the Coosa River Newsprint Company and Hearst Enterprises, dated December 8, 1954. It is offered as against Greater Buffalo, and subject to connection as against NEA.

Mr. MOORE: I don't see a connection with Greater Buffalo. It is a contract Hearst made with Coosa. The state of the record

and the fact is that Hearst never assigned the contract to International, never assigned it to Greater Buffalo, it has never been used for anything, and the uncontradicted state of the record and the uncontradictable fact is that Sylacauga gets its paper from Coosa under an entirely different contract. I don't see where that has any bearing at all.

2473 The COURT: What is your point?

Mr. BERNSTEIN: The witness has been testifying very generally all about Mr. Watt and the contract and telling us what is in the contract, it's different from the other contract. Here is the contract in evidence, which is the best evidence. An objection is being made to it——

The COURT: He didn't make that contract. That is King making it with Coosa.

Mr. BERNSTEIN: I will withdraw the offer at the moment and develop it further, your Honor.

The COURT: You claim that he was acting as an agent for King?

Mr. BERNSTEIN: I claim that Mr. Gorman knew about the transaction, discussed it with Mr. Nicht, discussed it with Mr. Watt, knows all about it. We will develop it through his testimony.

The COURT: I don't think there is any question that he had an interest, as indeed apparently Nicht expressed an interest, in someday having this other plant. Apparently he contracted for the paper years before he put the plant up. He has got to get that nailed down, I suppose, subject to the plant being built.

Mr. BERNSTEIN: The Government proposes to develop through the testimony of this witness that not only did they have that nailed down, they had a lot of other things nailed down, and we will develop that through the testimony of this witness, and that is the purpose of this line of inquiry. I thought we could save time by offering these documents in evidence, but we will go through it line by line, paragraph by paragraph, and we will do it the long way.

Mr. MOORE: I am going to withdraw my objection to this. I am going to wait with great interest while you develop what you represented to the Court that you are going to develop.

You go ahead, Mr. Bernstein, my objection is withdrawn.

2475 Mr. BERNSTEIN: Thank you.

Mr. STEVENS: May we have an objection for NEA?

Mr. RAICHLE: You don't claim anybody performed under that contract, do you?

Mr. BERNSTEIN: We will find out what the facts are.

Mr. RAICHLE: What do you claim about it?

Mr. BERNSTEIN: Let's find out from the witness.

(Thereupon Plaintiff's Exhibit P-56, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-55 for identification, your Honor, is a letter from the Coosa River Newsprint Company to Mr. J. J. Gorman.

By. Mr. BERNSTEIN:

Q. I show you that letter, Mr. Gorman, and ask you if that is a copy that you received from Coosa River?

A. I presume so.

Mr. BERNSTEIN: I offer it in evidence, your Honor.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: No objection.

2476 The COURT: I will receive it subject to the same ruling, that it is connected up.

(Thereupon Plaintiff's Exhibit P-55, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Now, I will accept Mr. Moore's challenge.

By Mr. BERNSTEIN:

Q. Dated September 22, 1954: "Dear Joe: As requested in our telephone conversation this morning, I confirm my August 30 discussion with you and Mr. Nicht in New York as follows: In the event you should decide to build a comic printing plant in the southeast, we would undertake to supply you with the newsprint requirements for such plant commencing in 1956, up to a maximum annual tonnage to be determined, with the understanding that your newsprint requirements of that plant would be purchased from us exclusively up to the maximum amount of tonnage we agreed to supply. Our paper would be supplied at our regular contract price and terms, the arrangement to be covered by a long-term contract either with

2477 Hearst Enterprises, Inc., or if with International Color Printing Company, to be guaranteed either by Hearst Enterprises, Inc. or King Features. We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so

elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower." Was the plant that International then had under consideration located adjacent to the Coosa River Newsprint Company?

A. We had no plant under consideration until we could get a contract from King.

Q. When I say "under consideration" I mean that you were discussing this with King, were you not?

A. We were discussing our contract with King.

Q. And you were discussing a plant in Sylacauga?

A. Not in Sylacauga. We discussed a plant in Anniston and Talladega, Childersburg, Coosa River, Coosa Pines, Sylacauga, and other places. Always we emphasized that we would not sign a contract for newsprint, we would not sign a contract for a building, we would do nothing to commit ourselves to go ahead until we had the contract we demanded.

Q. With whom?

A. The contract with King that we demanded and required.

2478 Q. A long-term contract for the printing business?

A. For a satisfactory price to enable us to borrow enough money to go ahead with the building and pay the owners a dividend, etcetera.

Q. Joseph J. Gorman went ahead with those plans after he did receive a long-term contract from King for printing within International?

A. I did not go ahead with this plan.

Q. Do you know Mr. Jack Nealeans?

A. Yes, sir.

Q. Who is he?

A. At one time secretary of the Chamber of Commerce of Sylacauga.

Q. Is that where the plant was ultimately located, in Sylacauga?

A. Yes.

Q. How far was the plant located from the Coosa River Newsprint Company?

A. Fifteen miles.

Q. And when Mr. Watts says to you, he is talking about an understanding that you, Mr. J. J. Gorman, of International

Color Printing Company, would be permitted to truck the newsprint from the Coosa River Plant, if you elect, and in that case he would allow the published carload freight rate or 2479 trucking rate to destination, whichever was lower, what did that mean to you?

A. It meant he was trying to sell some paper to a prospect, somebody who might possibly put in a plant. He was very foolish if he thought he was going to succeed because he knew, as well as I knew, and everybody else knew, we were in no position to put a plant in Sylacauga or anyplace else under the then circumstances, with a deficit of \$100,000.

Q. Did he know your deficit?

A. He knew we didn't have a contract with King.

The COURT: At least he knew he was going to deal directly with International, he was going to have an underwriter. In other words, he was——

Mr. BERNSTEIN: That is correct.

The COURT: I don't see anything peculiar about it.

Mr. BERNSTEIN: I don't see anything peculiar about it either, but I wanted the facts to be in the record.

The COURT: All right.

Mr. BERNSTEIN: The facts, as I stated them to the Court.

2480

By Mr. BERNSTEIN:

Q. Now, what did this sentence that I have just read mean to you insofar as pricing, that sentence that says: "We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower."?

A. If we put a plant in Sylacauga, they would give us the benefit of hauling it ourselves.

Q. And then the letter says: "From our various conversations——", do you remember having various conversations with him about the newsprint?

A. There were——

Q. Do you remember, that is the question, yes or no?

A. Yes.

Q. You remember clearly?

A. Yes.

Q. What do you remember about the conversation with Watts, when did they take place?

A. I don't remember where they took place or when they took place, but I remember in the beginning——

Q. Do you remember when they took place?

A. —— He asked me——

2481 Q. Do you remember when?

A. No.

Q. Do you know whether they took place on or about September 22nd?

A. I don't.

Q. You don't know whether it was in 1960?

A. Certainly, I know it was before 1960.

Q. Before when?

A. It was somewhere about 1956.

Q. Then you are talking about conversations after——

A. 1954, he offered me the paper for \$120.00 a ton——

Q. ——Is this——

A. I am going to give you the story, do you want it?

Q. Is this prior to the time that Greater Buffalo bought the stock?

A. Yes, prior to the time.

Q. Go ahead.

A. He said, "I'll sell you the paper for \$119.00 a ton and we will build a plant on our plot." They had a meeting of the Board of Directors and then I had a letter from him and he said: "I'm sorry, the Board of Directors can't sell for less than the market price, \$127.00 a ton, and we will not build a plant on our plot."

Q. Later on you negotiated with the Sylacauga Chamber of Commerce for the——

2482

A. I was negotiating with them right along.

Q. ——To give you some land?

A. Yes.

Q. Now, continue reading the letter: "From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually. This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama. We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for

disposal of the tonnage in the event you should decide not to go ahead." Do you know anything about the contract of Coosa River Newsprint Company signed with Hearst Enterprises, Inc. in December of 1954 following—

A. They didn't sign with us, they signed with Hearst. What they were doing with the paper was their business.

Q. Did you discuss it with Mr. Watt?

A. Yes.

Q. Did you discuss the Coosa River Newsprint Company's newsprint contract with Hearst with Mr. Watt?

A. He told me he would sign with Hearst, not us.

2483 Q. What was the basis for his telling you that?

A. We had no contract, we had no business. We—suppose we put a plant there and only had a six month contract, we would have no newspaper to use it up.

Q. Did you ask Mr. Watt to enter into a contract with International?

A. No. Watt decided on his own that he wanted to have no part of me.

Mr. BERNSTEIN: Please mark for identification document number 153(a).

(Thereupon document referred to was marked Plaintiff's Exhibit P-107 for identification.)

Mr. BERNSTEIN: It is offered in evidence, Your Honor.

Mr. STEVENS: It is in relation to this same contract. I believe we have checked on behalf of NEA.

The COURT: Same objection?

Mr. STEVENS: Yes.

The COURT: Same ruling.

Mr. MOORE: On this I think we do have an objection.
2484 I let the Coosa contract with Hearst go in. This is a contract between Hearst and Coosa evidently executed November 14, 1955, and I know nothing about it.

Mr. BERNSTEIN: If the court please, this document—

Mr. MOORE: Are you going to identify it or is the witness?

Mr. BERNSTEIN: Do you doubt the authenticity?

Mr. MOORE: I've never seen it before.

Mr. BERNSTEIN: Document 153, this is the document—

Mr. MOORE: This document has never been given to me by anybody.

Mr. FELDMAN: That came with the group.

The COURT: Gentlemen, why don't you hold that? See if you can refresh Mr. Moore's recollection of it at all. Show it to Mr. Gorman and see if he knows anything about it. I don't want to dilly dally around for one letter. Ask Mr. Gorman. I don't want him to have to come back again. Ask him if he knows anything about the letter.

By Mr. BERNSTEIN:

Q. Do you know anything about an extension of the
2485 Coosa River contract with Hearst that you talked about, which says: "The term of this contract shall be the period beginning January 1, 1956 and ending December 31, 1969.", and then this document refers to an extension of the term of the December 1954 contract, extending the term beginning with the period of January 1, 1956, and ending December 31, 1969, do you know anything about that?

A. No, sir.

The COURT: What you will have to do is thresh that out with Mr. Moore. Let's go on with Mr. Gorman. How much more time are you going to spend with him do you think?

Mr. BERNSTEIN: I think we have another hour, Your Honor.

The COURT: Where do you live, Mr. Gorman?

The WITNESS: Wilkes-Barre. I have no objection to spending a little more time in Buffalo.

The COURT: I am. I am getting tired. I want a full examination of you, it is important, but we are going to have to continue this lawsuit. We have arranged to come back the twelfth
2456 of July. I don't want you to come back if it isn't necessary. We will go on for a while. I don't see why we need an hour with Mr. Gorman.

Mr. BERNSTEIN: I will try and rush it along, your Honor.

The COURT: Now, other than peeling out each exhibit one by one and having these lawyers look them over, particularly Mr. Stevens who apparently isn't widely acquainted with some of these papers, it seems to me the thing to do would be to make a bundle of these, sit down, and let them see them, and make an offer of proof.

Mr. BERNSTEIN: I will try to expedite it.

The COURT: You know, the lawyers don't know what you are going to peel off. They can sit with you for ten or fifteen minutes maybe and agree on everything, subject to certain objections.

Mr. BERNSTEIN: We will do that.

2487 The COURT: You can ask Mr. Gorman, if you want to, specific questions from those documents.

Mr. BERNSTEIN: I offer P-57 in evidence as against Greater Buffalo, subject to connection as against NEA.

Mr. MOORE: No objection.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: Same ruling, received.

(Thereupon Plaintiff's Exhibit P-57, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Do you know who the stockholders of Coosa River Newsprint are?

A. Kimberly-Clark, I believe.

Q. At that time were any Scripps-Howard newspapers involved?

A. A number of newspapers, who they were I don't know.

Q. Did you have any discussion with Mr. Watt of Coosa River Newsprint Company in or about 1955, or with anyone else, that lead you to believe that Coosa River Newsprint
2488 Company was a joint venture between a number of southern newspapers that were buying newsprint from that plant and Kimberly-Clark?

A. In 1954 I knew that.

Q. That was the situation?

A. Yes.

Q. Mr. Gorman, I read to you your testimony in the proceedings of October 25, 1961, page 54, you were asked these questions by Mr. Moore—on page 53 it shows that you were under direct examination by Mr. Moore—on page 54 you were asked this question: "Reverting back to International Color Printing Company prior to 1955 when it was owned by the Govin family, were dividends paid over the 25 or 30 years that the Govins owned this business—" strike that out. I intended to read page 53, line 23, this is a question by Mr. Moore to you: "Now, I think you have stated from time to time, have you not, in various conversations with unions and other people that Greater Buffalo was a competitor?" Answer: "Yes, sir." "Q. What do you mean by competition in that sense?" Answer: "I meant we were competitors production-wise, so that I could supply King Features, so that I could supply them with a price

which would enable them to compete with other plants, including the Greater Buffalo." Is that correct?

2489 A. I said that, yes.

Q. Now, with respect to your conversations with Mr. Nicht concerning the contract with King Features, I show you P-58 in evidence, your letter to Mr. Nicht, in which you say: "Dear Frank: I am enclosing the first form of a contract to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the southern plant but I think you will be perfectly willing to agree that when a southern plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation saving will accrue to International Color Printing Company." Were you then referring to the fact that P-56 in evidence, the contract with Coosa River Newsprint Company, dated December 8, 1954, and signed by Mr. Sternberger as president of Hearst Enterprises, was going to get that transportation allowance that you discussed before and that you contemplated

2490 that in the event that plant was built that International would get the benefit of that allowance?

A. If they went ahead with the plant.

Q. If International went ahead with the plant you contemplated that International would get the benefit of that trucking allowance, is that correct?

A. Right.

Q. Is that correct?

A. Right.

Q. That was on December 30, 1954, before Greater Buffalo acquired the stock of International, is that correct?

A. That is correct. May I read the last paragraph?

Q. I will read the rest of the letter: "This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond plant." You testified earlier that you were absorbing a phantom freight as if the newspapers, the supplements, were shipped from Richmond, is that correct?

A. That is right.

Q. "I realize fully unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know——"

A. Wait. All right.

Q. "—but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory
2491 profit. Therefore, there should be a further adjustment in price to allow us to what we both will agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue." At that time you were talking with Mr. Nicht about opening a Sylacauga plant and at the same time you were discussing with Mr. Koessler the purchase of International, is that correct?

A. Certainly, and I emphasize what I said in that letter, therefore we can't operate without a satisfactory profit.

Q. That is what you meant when you testified this morning that you continually told Mr. Nicht you wanted more money?

A. There is the proof.

Q. You say: "Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further but I am giving it to you now so you will have a chance to look it over through the weekend and maybe I will be able to see you sometime next week in New York. Best regards. Joseph J.

Gorman." Is there anything else you want to add to
2492 that letter?

A. You said I was negotiating with that—I was negotiating with Walter Koessler. I only met Mr. Koessler one week. I hadn't given him the net worth.

Q. What?

A. The amount of the net worth.

Q. But referring to your meeting with Mr. Koessler; isn't it a fact that you met Mr. Koessler at a luncheon arranged by Mr. Nicht, at a restaurant in New York City?

A. It is my recollection, yes.

Q. It is?

A. Yes.

Q. And the purpose of the meeting was simply a friendly get-together?

A. That is right.

Q. Just for lunch, to get to know each other, as you knew other competitors?

A. That is right.

Q. And you don't recall the name of the restaurant in New York City?

A. Yes.

Q. What was it?

A. Columbo's, 45th Street and Second Avenue.

Q. And then after that lunch you went to the hotel with Mr. Koessler and not with Mr. Nicht?

2493 A. I have no recollection of going to a hotel with Mr. Koessler.

Mr. MOORE: May I inquire; counsel appears to be examining the witness from a transcript of testimony. For the purposes of our own information, I would like to know if it is testimony in this proceeding or some other proceeding?

Mr. BERNSTEIN: I would have no hesitation to state to the Court, if the Court wishes me to answer Mr. Moore—

The COURT: You are just looking at some notes of some kind, you are asking specific questions that occur to you?

Mr. BERNSTEIN: That is right.

The COURT: What difference does it make what it was used for. Ask him more rapidly. You were at Columbo's on 45th and Second Avenue, what is next? You didn't go to the hotel. All right.

By Mr. BERNSTEIN:

2494 Q. And isn't it a fact that at that first meeting you discussed the south primarily, he discussed the newsprint in the south and your other plant, is that correct?

A. I told you earlier what I thought we discussed. We discussed many things referring to the printing of comic supplements, including the south, newsprint, mechanics, unions, and so forth. What exactly we said thirteen years ago in Columbo's, I don't remember.

Q. Do you remember saying that he asked you whether the owners would be interested in selling the southern section of their plant?

A. As I recall, he said he would be interested in a share of the southern section. I said to him that the owners were not interested in selling a share of anything, if he wanted to buy anything he would have to buy it all.

Q. What did you understand him to mean?

A. I don't know.

Q. You don't know. Didn't you understand what he was taking about.

A. I didn't bother to find out because I knew there was no interest in doing a thing like that.

Q. I show you your testimony before the Grand Jury on October 11, 1960, and I ask you to read it to yourself, the questions you were asked and the answers that you made, and then I will ask you some more questions.

2495 (Witness examines testimony referred to)

Mr. RAICHLE: Just a moment. Could the record show that the witness was examining during the period that the court reporter was replenishing his ribbon supply and the Grand Jury testimony, which counsel had in his hand and showed to him—the reason I want that on the record is because I am entitled to see it, he having used it to examine the witness.

The COURT: You mean this Grand Jury——

Mr. RAICHLE: Yes.

The COURT: If you want to see it I am going to order that you see it. He is not going to examine the witness from part of it unless you see all of it.

Mr. BERNSTEIN: May the record show that the witness was shown—Mr. Gorman, will you state what pages of this transcript you examined? State which pages you examined?

The WITNESS: 981, 982, 983, 984.

2496 The COURT: How many pages in all did he testify to?

He said four there. How many pages did he fill up with all his testimony?

Mr. BERNSTEIN: His examination went from 949 to——

The COURT: Don't you have an index? Is that all his testimony?

Mr. BERNSTEIN: 949 to 1057, your Honor.

The COURT: Over 100 pages, you are referring to four?

Mr. BERNSTEIN: That is correct.

The COURT: I assume that you will want to read the hundred to see if there is anything to mellow those four.

Mr. BERNSTEIN: No objection to that, your Honor.

The COURT: Did you read those four pages, the questions asked and the answers returned by you?

The WITNESS: Yes.

The COURT: Is that what you then said?

The WITNESS: As I recall it, yes.

The COURT: I assume that in the other hundred pages there may be other questions and answers that might modify those four?

The WITNESS: I have no idea what was in the other
2497 pages.

The COURT: There is no question that this is an accurate transcript of what you then said, to the best of your recollection?

The WITNESS: Yes.

By Mr. BERNSTEIN:

Q. You were asked this question, Mr. Gorman, on page 978, you were asked—excuse me, page 977, line 19, you were asked:

"Q. When was the first time that you or anyone else on behalf of International Color had discussions with any representative of Greater Buffalo Press in regard to the sale?"

"A. In the latter part of 1954 or the early part of 1955.

"Q. How did those discussions come about? In other words, who initiated them?"

"A. I had lunch with Mr. Koessler and Mr. Nicht.

"Q. Who arranged the meeting?"

"A. I think I told Mr. Nicht——"

Mr. STEVENS: Excuse me, this isn't essentially my party, probably not at all, but the pages Mr. Bernstein says
2498 he is reading from are not among the pages which Mr. Gorman just said were the pages he read.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: You said 978 is the page you are reading from, he read from page 981 through 984.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: What are you doing now?

Mr. BERNSTEIN: I am reading the questions and answers. I am going to ask him whether the questions and answers are true. Conforms to what he testified to before. It is background so that you can understand the questions he looked at on those pages. You have intervening colloquy. Counsel would have the opportunity to read the whole thing so there shouldn't be any problem with it.

The COURT: When?

Mr. BERNSTEIN: We will give them copies at the close of the examination. We will give it to them now.

2499 The COURT: I thought you said you contemplated this man would be off in a hour?

Mr. BERNSTEIN: I will be through in fifteen minutes, Your Honor.

The COURT: You got 100 pages to read. All right, go ahead.

By Mr. BERNSTEIN:

"Q. How did these conversations come about, who initiated them?

"A. I had lunch with Mr. Koessler and Mr. Nicht.

"Q. Who arranged the meeting?

"A. I think that I told Mr. Nicht that I was on a rather friendly basis with all other competitors but I didn't know Mr. Koessler. He suggested it would be nice to know him, he arranged for the lunch."

Mr. RAICHLE: That is what he said here.

Mr. BERNSTEIN: There is no doubt about it.

By Mr. BERNSTEIN:

Q. Then on page 979 you refer to the fact that you met at a restaurant in New York City, you don't recall the name of it, you were asked what the discussions generally were about, and you said at that time, as you say here today, machinery, tools, equipment, newsprint, union negotiations,
2500 union contracts and then——

Mr. MOORE: May I inquire what the purpose of this examination is, he is just confirming. If you want to impeach the witness——

Mr. BERNSTEIN: The next question will give you the purpose.

Mr. MOORE: We have been fifteen minutes getting there.

By Mr. BERNSTEIN:

Q. "Q. During that conference or meeting on that day did the discussion at all turn to the sale of International Color Printing Company?

"A. We discussed the south primarily and he discussed the newsprint in the south and what were our plans. He said he wondered if the owners would be interested in selling the southern section of their plant, of their setup, in other words, he might be interested in the southern setup.

"Q. By southern setup you mean what?

"A. The plant we had planned to establish there.

"Q. The one at Sylacauga, is that correct?

2501 "A. Yes.

"Q. At that time no capital was contributed toward creating such a plant at all, except the understanding you had in regard to newsprint, is that correct?

"A. Yes. He didn't know whether there was any capital set up or not.

"Q. Did you learn from him whether or not he intended to erect a plant in the south?

"A. I think prior to that time he already had a contract for newsprint at Lufkin.

"Q. Do you know whether he had a plant in Lufkin at that time?

"A. He did not.

"Q. At that time you knew he contemplated building a plant in Lufkin?"

Then a juror asked which Koessler are you talking about, and he said Walter, and their is colloquy about making sure it was the same Koessler. Then he was asked:

"Q. What was the result of the first meeting?

"A. I told him that I felt sure that the company, the stockholders, would not be interested in such an arrangement for investment on his part in the south, but they might be interested in selling the whole works. I asked him if he would
2502 be interested in that."

and his response was the same as the witness has testified to here before.

The COURT: What is contrary to what he said on direct examination?

Mr. BERNSTEIN: It is not contrary. It adds one fact that he denied on cross-examination.

The COURT: Denied or——

Mr. BERNSTEIN: I say he denied. I asked him on cross-examination whether they were contemplating a plant at Sylacauga, whether International was contemplating a plant at Sylacauga, and whether Mr. Koessler discussed purchasing the southern portion of the International operation, and he said no. So it is for that purpose, to show that on previous occasions, under oath, he testified that at the first meeting with Mr. Koessler, Mr. Koessler said he was interested in buying the southern
2503 Koessler had plans for a Lufkin plant, and then the transaction developed from that.

Mr. MOORE: Now, Mr. Bernstein, you stated he denied, the witness denied under cross-examination here about Mr. Koessler inquiring whether or not they would be interested in selling a section in the southern plant; the witness testified when you asked him, he said yes—maybe I better read it.

The COURT: Something about all or nothing at all.

Mr. STEVENS: Mr. Koessler asked if he was interested in selling the southern section, the southern plant, the owners said—Mr. Gorman testified that the owners were not interested in selling half of anything. That is what he testified to when you asked him before.

The COURT: Well, gentlemen, I think we ought to recess. Give all the lawyers sets of that Grand Jury testimony, will you?

2504 Mr. BERNSTEIN: Yes. May we meet with counsel during this recess to get these documents numbered? We can go along if we do that. I think we will be through in fifteen minutes.

The COURT: Do the best you can.

(Thereupon the Court was in recess at 2:45 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:10 P.M.)

Mr. BERNSTEIN: If your Honor please, counsel have gone over a number of documents and I would like to have them marked and offered in evidence as against Greater Buffalo, subject to connection as against NEA. I think that will expedite the proceeding.

The COURT: All right.

Mr. STEVENS: May I understand we have the objection?

The COURT: This is the same class of subject we
2505 have been working with right along. I understand.

(Thereupon document referred to was marked Plaintiff's Exhibit P-108 and received in evidence.)

Mr. BERNSTEIN: P-108 in evidence is a letter dated July 19, 1954, from Mr. Gorman to Mr. Ralph Watt of the Coosa River Newsprint Company.

(Thereupon document was marked Plaintiff's Exhibit P-109 and received in evidence.)

Mr. BERNSTEIN: P-109 in evidence is a memorandum dated July 19, 1954, by Joseph J. Gorman, subject: "Details on living conditions, recreation, educational, and worship facilities in Sylacauga and Talladega."

(Thereupon document was marked Plaintiff's Exhibit P-110 and received in evidence.)

2506 Mr. BERNSTEIN: P-110 in evidence is a letter August 11, 1954, from Mr. Gorman to Mr. Frank Nicht.

(Thereupon document was marked Plaintiff's Exhibit P-111 and received in evidence.)

Mr. BERNSTEIN: P-111 marked in evidence is a memorandum to Mr. Gorman from Joe Clinton, dated January 24, 1955.

(Thereupon document was marked Plaintiff's Exhibit P-112 and received in evidence.)

Mr. BERNSTEIN: P-112 in evidence is a memorandum dated April 5, 1955, to Mr. Gorman from Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-113 and received in evidence.)

2507 Mr. BERNSTEIN: P-113 in evidence is a letter dated May 15, 1955, from Mr. Gorman to Mr. R. O. Sternberger of the Hearst Corporation.

(Thereupon document was marked Plaintiff's Exhibit P-114 and received in evidence.)

Mr. BERNSTEIN: P-114 in evidence is a letter dated June 3, 1955, from Mr. Joseph J. Gorman to Mr. Jack Nealeans, Chamber of Commerce, Sylacauga, Alabama.

(Thereupon document was marked Plaintiff's Exhibit P-115 and received in evidence.)

Mr. BERNSTEIN: P-115 in evidence is a letter dated September 27, 1955, from Joseph Gorman to Mr. Frank Nicht.

(Thereupon document was marked Plaintiff's Exhibit P-116 and received in evidence.)

2508 Mr. BERNSTEIN: P-116 in evidence is a memorandum, dated April 13, 1956, from Bessie J. Gorman to Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-117 and received in evidence.)

Mr. BERNSTEIN: P-117 in evidence is a memorandum to Mr. Gorman, dated March 6, 1957, from Joe Clinton.

(Thereupon document was marked Plaintiff's Exhibit P-118 and received in evidence.)

Mr. BERNSTEIN: P-118 in evidence is a letter dated June 26, 1956, from Joseph J. Gorman, president, International Color Printing Company, to Cecil Waldrop, Chairman, Industrial Development Board of the City of Sylacauga, Incorporated.

2509 (Thereupon document was marked Plaintiff's Exhibit P-119 and received in evidence.)

Mr. BERNSTEIN: P-119 in evidence is a letter dated July 2, 1957, from Mr. Gorman to Mr. Koessler.

By Mr. BERNSTEIN:

Q. Mr. Gorman, I show you P-108, P-109, P-110, P-111, P-112, and ask you to follow those documents with me as I summarize the nature of the documents. P-108—please check me if I am incorrect—P-108, what is the date of that letter?

A. July 19, 1954.

Q. That is a letter from you to Mr. Watt, and the subject matter of the letter setting up a printing plant in the south and sale of paper, and you say: "You have the paper to sell. King Features and International Color Printing Company have the use for it." On page two it discusses the factors that you took into consideration concerning the establishment of a plant in that area, is that correct?

A. That is right, always keeping in mind that we are not committed to build a plant in the south and to take any paper.

2510 Q. P-109 is what document?

A. July 19, 1954.

Q. And that is a memorandum that you prepared, and how would you summarize the nature of that?

A. Details on living conditions in Sylacauga and Talladega.

Q. And that is a survey you made on a trip down there, is that correct?

A. Same qualifications.

Q. And what is P-110?

A. August 11, 1954, to Frank Nicht.

Q. Your letter to Frank Nicht, and there you talk about the need for a mill contract, that is the source of supply, is that correct?

A. Also talked about—

Q. I will go into the other things. You talk about that among other things?

A. Yes.

Q. And then you tell him that you have to decide on the kind of presses and the union arrangements, is that correct?

A. That is right.

Q. Then you talk about— you say this: "I suppose that Mr. Watt may be somewhat surprised when he learns that Inter-

national Color Printing Company and King Features
 2511 are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th." You discuss labor conditions in the area and then on page two you discuss press equipment and then you discuss flexibility. Is there anything else that you want to add?

A. We also wanted to work out a contract that would put us in better shape to do these things than we have been in the past.

Q. You say that in the letter?

A. Yes, I did.

Q. Okay. P-111 is what document?

A. January 24, 1955, a report on the trip to Georgia and Alabama by Roger Zarens, Tom Brennan and Joe Clinton.

Q. All of those people went down there?

A. That is right.

Q. And this was before—is this while you were having discussions with Mr. Koessler concerning—

A. That is right.

Q. They had not acquired the plant, is that correct?

2512 A. Well, you notice the date, January 24th.

Q. Six months before the acquisition?

A. That is right.

Q. And that was a detailed trip and report, was it not?

A. Based on the fact that we never gave up hope that something might happen to make it possible to go ahead.

Q. You were seriously pursuing the opening of a Sylacauga plant?

A. Provided we could get the King Feature contract.

Q. Provided you could get the King Feature contract, you were talking with the Luria Construction Company, you were talking—you went into details as to the building size and as to the cost per square foot?

A. I was not talking, they were talking.

Q. You were listening?

A. They wrote it to me.

Q. They wrote it to you. What did all these people do on the trip?

A. They looked around at just what you said, buildings, conditions, and so forth.

Q. Were there any details they were not considering, necessary for the pre-planning of opening a plant there?

Mr. MOORE: Well, I will object to the form of 2513 that question. Any details they were not considering; how can he answer that?

Mr. BERNSTEIN: I will withdraw it.

By Mr. BERNSTEIN:

Q. Is this a fair statement; that you were sending—in order to open a plant in Sylacauga a great deal of preplanning had to be done?

A. Besides getting a contract.

Q. Let's preface all my questions that International Color Printing Company was not going to open a plant in Sylacauga unless it had a long-term contract with King at a favorable price—

A. That is right.

Q. Leave that aside, we will assume all of my questions are based on that assumption.

A. Then I don't know why you are proceeding any further.

Q. Well, let's pursue it. If you had that agreement at that time you would have to do a great deal of preplanning in order to get the plant open, is that correct?

A. Depending on how fast you wanted to open the plant.

Q. No matter how fast or how slow, you would have to do the preplanning before the plant opened?

2514 A. That is correct.

Q. On January 24, 1955, were you then doing all of the things that you thought necessary for preplanning to open a plant in Sylacauga?

A. That is right.

The COURT: What is your point in all this? Is it your theory that he, indeed, was not working for International or King, but this was all an under the table scheme for Koessler?

Mr. BERNSTEIN: Absolutely not, your Honor. The Government's position is that Mr. Gorman was seriously doing everything necessary toward opening a plant in Sylacauga, Alabama, that had started many years before because of his concern for the western flank of the south, for the competition going to be offered by Lufkin, and that after Mr. Koessler acquired the

stock of International, he continued on with those plans, and that while Greater Buffalo Press contributed something additionally, some ideas, it was a continuation of everything that had gone on before and had been carried on, it was just a continuation of it. This is all part of the Government's contention; that the sale of International to Greater Buffalo and the contract with King, and those letters we read in evidence yesterday as to the arrangement between Nicht and Koessler are all one transaction, all one part of one package. It cannot be viewed in isolation, one part without the other part.

Mr. MOORE: The simple answer to that, the state of the record, is that not only did Greater Buffalo contribute plans and at the same time a plant, but they contributed the cold, hard cash which nobody else had.

Mr. BERNSTEIN: Nobody denies that, and at an appropriate time——

Mr. MOORE: It is essential——

Mr. BERNSTEIN: ——at an appropriate time we will go into the details of the content of all these memoranda and what the Government claims for them. Suffice it to say, at this time we want to show that Mr. Gorman on January 24, 1955, and whatever dates are in those documents, was continuing on, making serious plans toward opening a plant in Sylacauga.

By Mr. BERNSTEIN:

Q. May 15, 1955, your letter to Mr. Sternberger talks of the Hearst Corporation, talks about the paper situation——

Mr. STEVENS: Does that have a number?

By Mr. BERNSTEIN:

Q. What is the number of that exhibit?

A. P-113.

Q. That letter concerns further discussions or further communication with Mr. Watt about the purchase of newsprint, is that correct?

A. Yes, sir. May I say that this is all a continuing effort to have things ready in case we got a contract we could go ahead.

Q. That Coosa River Newsprint contract we showed you before——

A. Had nothing to do with it.

Q. That was an outgrowth of this P-113 letter?

A. In case we went ahead we would get the paper from Sternberger.

Q. That contract was the culmination of what you discussed in P-113?

A. What contract?

Q. P-56 in evidence.

A. I had nothing to do with that.

Q. It was the culmination of the negotiations that you had carried on with Mr. Watt?

A. Sternberger—

Q. Is that correct?

A. —so that the paper would be ready to use no matter who used it. In the meantime we might have no contract with King and have no use for the paper whatever.

Q. Joseph J. Gorman did the negotiations that led up to the contract, is that correct?

A. Yes, but that doesn't mean I was going to get the business.

Q. We know that.

A. That was all a nebulous hope. I think you are wasting your time.

Q. I want to make sure that Mr. Joseph J. Gorman
2518 had a hope to get a contract?

A. I will admit that, that I had a hope.

Q. Will you also admit that you conducted the negotiations with Mr. Watt of the Coosa River Newsprint?

A. With the hope we would get a contract.

Q. That hope, those negotiations, led up to the contract, P-56, between Coosa River Newsprint Company and Hearst?

A. They signed that contract—Sternberger—in case we were out of the picture altogether Hearst could come in.

Q. You were in the picture?

A. I wasn't in the picture until I had money.

Q. That is what you mean by not being in the picture?

A. I was out of the picture.

Q. Except for the money end, you were doing the detail work?

A. Isn't that the important end?

Q. Even if you have the money end you could not consummate the transaction without the details?

A. No.

Q. You were doing the details?

A. Always in the hope, yes.

Q. Thank you. Then on—

A. At the time I didn't have much hope.

Q. P-114 in evidence, June 3, 1955, again before the purchase by Greater Buffalo of the stock of International, you write to the Secretary of the Chamber of Commerce and you say in the last paragraph: "I wish to impress upon you that this is a very responsible company and King Features Syndicate is fully responsible and just between the Sylacauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylacauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided." You meant that with the hope that you would get the contract from King?

A. That is right.

Q. You were then negotiating with King for the contract?

A. Yes.

Q. Is that right?

A. That is right.

Q. And that is the contract that ultimately wound up on August 17, 1955, after Greater Buffalo had the stock of International?

A. No, no, the contract which I wanted from King was going to give us a satisfactory profit to go ahead; that contract didn't.

Q. You told us earlier today that the contract that was executed on August 17, 1955, was the result of negotiations that you had with Nicht for the last six months, is that correct?

Mr. MOORE: He did not say that.

By Mr. BERNSTEIN:

Q. Did you say that?

A. No.

Q. What did you say?

Mr. RAICHLE: He said it came six months later.

The WITNESS: I said it came six months later.

Mr. BERNSTEIN: I know, that is what Mr. Raichle just said.

Mr. RAICHLE: That is what the record shows.

The COURT: I am sure this man is not echoing Mr. Raichle. Mr. Raichle has studied with this man, knows. You don't have to be prodded by Mr. Raichle in any manner?

The WITNESS: What is the question?

By Mr. BERNSTEIN:

Q. The question is, the contract that you had negotiated with Mr. Nicht for the printing with International, which you

executed in August of 1955, was the result of negotiations that you had had with Nicht, is that correct?

A. That is right.

Q. For how long had the negotiations been going on?

A. For a year. Six months or a year, I don't know.

The COURT: You said you were pushing 71, we are going to have three more days of this in July, not for you I don't mean. I hate to have you come back. Do you have any feeling on it?

The WITNESS: You don't have to worry about me.

The COURT: I don't think we are going to get finished. I am sure that Mr. Raichle and others are going to have redirect. I keep knocking these hours off, fifteen minutes off, and unless there is something very imminent here—

Mr. BERNSTEIN: Could we resume on the twelfth, your Honor?

The COURT: Well, I was thinking about this man. If he doesn't want me to worry, I'm not.

The WITNESS: I don't like it.

The COURT: Do you see any chance for you to finish today?

Mr. BERNSTEIN: No, your Honor.

The COURT: The holiday is coming on, it is a hot day, a sleepy one, at least for me. We will get you back, will you come up on the twelfth at ten o'clock?

The WITNESS: Yes.

The COURT: I think we can get through with you in the morning. I was concerned about possibly finishing in lieu of having you come back, but I don't see it. Well, I think we will recess and adjourn this case until the twelfth of July at ten o'clock. I would like every effort made to get it crisp and moving fast. All your exhibits—I would like to have you come in the day before, if possible, and have them marked for identification ahead of time, and show them to the lawyers, if you can, so they know what is contemplated. That will save
2523 a lot of time. Then we will take up, as we have agreed, in chambers, as soon as we get Mr. Gorman finished, your end of the thing?

Mr. STEVENS: Yes, indeed, your Honor.

The COURT: I think it's a good time to quit, we will do so. I hope you each have a pleasant Fourth of July holiday.

(Thereupon the Court was in recess at 3:45 P.M.)

2524 PROCEEDINGS OF JULY 12, 1967, COMMENCING AT
10:10 A.M.

(Thereupon documents were marked Plaintiff's Exhibits P-120 through P-140 for identification.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Gorman, before the close of the last session, we were—I was inquiring about your participation in the contract between Coosa River Newsprint and Hearst. Now, isn't this the fact as to what the situation was; at least a year before Greater Buffalo purchased International, International was making detailed plans to open a plant in Sylacauga, which included getting a long-term contract from Nicht and getting assistance from King in financing the plant?

A. Yes, sir.

Q. And isn't it true that as part of that plan, the first thing necessary to be done was to obtain—one of the first things to be done was to obtain a contract for newsprint?

2525 A. Yes, sir.

Q. And isn't it true that you, Joseph J. Gorman, as a representative of International Color Printing Company, negotiated a contract with Coosa River Newsprint Company, and then they insisted that the contract be executed with Hearst because of Hearst's better financial position?

A. It is not true that I ever negotiated a contract with the Coosa River Newsprint Company.

Q. Isn't it also true that Coosa River, as a result of your—strike that. Isn't it true that a ten-year contract was executed between Coosa River and Hearst that was to expire in 1965, and then after Greater Buffalo acquired International, Coosa River Newsprint contacted you, Joseph J. Gorman, as representative of International, and obtained your agreement to extend the contract they had with Hearst for four years, from 1965 to 1969?

Mr. RAICHLE: Wait a minute——

The COURT: Gentlemen——

The WITNESS: I had no agreement.

Mr. RAICHLE: I object to that, first as to form, he said, "Isn't it also true", and the witness said that other matter which he was interrogated about was not true. You can't start the question: "Isn't it also true?"

The COURT: Could you separate that a bit Mr. Bernstein?

Mr. RAICHLE: Too many questions in one.

By Mr. BERNSTEIN:

Q. Isn't it true, Mr. Gorman, that a ten-year contract was executed between Coosa River Newsprint and Hearst to expire in 1965?

A. Yes, sir.

Q. Isn't it true that after Greater Buffalo acquired International Coosa River contacted you, Joseph J. Gorman, as representative of International, and obtained your agreement to extend the contract they had with Hearst for four years, from 1965 to 1969?

Mr. RAICHLE: I object to that part, representative of Hearst. Why do you put that in? There is no evidence in the case to justify it.

The COURT: Now, Mr. Gorman understands——

The WITNESS: I have no recollection of any extension of any agreement whatever with Coosa River on the part of International.

2527 By Mr. BERNSTEIN:

Q. You have no recollection that you agreed with Hearst that International—you, Joseph J. Gorman, as representative of International, agreed with Hearst that International would buy the newsprint from Hearst that it had contracted to get from Coosa River?

A. That is correct, provided we got a long contract from King Features which would enable us to use the newspaper. I told Mr. Sternberger and Mr. Nicht over and over again that we couldn't use any of the newspaper unless we had a contract with Hearst, unless we had a plant down there, and we would not put a plant there unless we had a contract with King to make it possible to amortize that building. We had no contract.

Q. All right. I invite your attention to your Grand Jury testimony, page 972——

Mr. STEVENS: Do you have a copy of that that we may look at?

Mr. BERNSTEIN: Yes, I do.

Mr. STEVENS: Thank you.

By Mr. BERNSTEIN:

Q. You were asked this question at line 13: "Prior to the time of the acquisition of Greater Buffalo Printing was any determination reached in regard to going to the south?" What was your answer?

A. "In about the year 1954 I obtained for the first time a promise from the customer, Coosa River Newsprint Company, that they would allow us to purchase newsprint and that the International Color Printing Company was trying to make a determination to go into the south."

Q. You were asked this question: "When you received a promise, where was it?"

A. "At Coosa, Alabama."

Q. "Was that a written promise or was that an oral promise?"

A. "It was an oral promise and later a written promise."

Q. "As committed to writing, what did the promise contain?"

A. "That they would sell us so many tons of paper over so many years."

Q. "Outside of International Color Printing Company was any other corporation or individual a party to that contract?"

A. Do you want me to continue?

Q. Yes.

A. "The Coosa—"

Mr. RAICHLE: Can the record show that we are reading from the Grand Jury testimony?

2529

By Mr. BERNSTEIN:

Q. What was your answer to the Grand Jury under oath?

A. "The Coosa River people finally insisted that the Hearst Corporation should be a party to this contract. All of our business was with King Features. They didn't want to do business with us alone because we had only one contract."

Q. Now—

Mr. RAICHLE: Wait a minute. "They" refers to the Coosa people, right, Mr. Bernstein?

By Mr. BERNSTEIN:

Q. Does the quote "They" refer to—

A. Yes.

Q. Then you were asked this question: "In what way did the Hearst Corporation become a party to that contract?"

A. "Coosa River—the Hearst Corporation was to take over the contract for the newsprint, we were to buy the newsprint directly from Hearst."

Q. You were asked this question: "In other words, the Hearst Corporation would be liable for any of the paper which you people, International Color Printing, used there?" What was your answer?

2530 A. "Yes, I believe in later years we released them from that, they got out of it."

The COURT: Right there, excuse me, Mr. Bernstein, but from the former testimony this corporation in Wilkes-Barre was in bad shape, you know that?

Mr. BERNSTEIN: That is the former testimony. The Government disputes that and will offer evidence through this witness that the company was not insolvent. The Government's contention is that International and Joseph J. Gorman was, up until the very day of the sale to Greater Buffalo, making detailed plans to open a plant at Sylacauga, Alabama, with Hearst as the exclusive sales agent, and all printing at Sylacauga to be——

The COURT: He said they had that hope, providing they could get a long-term deal with their only customer. Further he said—I am trying to give you a view of the Court sitting, I hope, impartially here—that he said the Coosa
2531 River paper people were not willing to take that risk, they wanted some guarantee of payment. That is his view. You say that is not the proper view, the factual view?

Mr. BERNSTEIN: The Government proposes to show that that is not the whole story, that the factual——

The COURT: It is part of the story?

Mr. BERNSTEIN: It is part of the story, yes.

The COURT: As part of the story it is accurate?

Mr. BERNSTEIN: That part of it they didn't want to take International's risk is correct. The other part that is very important, and this is what the Government proposes to produce through the testimony of this witness, the Government proposes to prove through this witness that as part of the entire transaction, he was negotiating a contract with King, and at
2532 the same time he was making detailed plans, every plan possible, for going ahead with the building of the Sylacauga plant and that arrangement developed into the purchase of the International plant by Greater Buffalo, and

he then continued on in his role, as International, to open up the plant, an International plant at Sylacauga, and it was only after the injunction of this Court that prohibited International from going ahead with the development of the Sylacauga plant that it then changed and became a Greater Buffalo plant under different organization.

The COURT: All right.

Mr. BERNSTEIN: That is the Government's theory and the Government proposes to prove it through this witness.

By Mr. BERNSTEIN:

Q. So, Mr. Gorman, it is true then—strike that. P-121 for identification, Mr. Gorman, is a memorandum that you wrote to Mr. John Booth, dated November 7, 1955, is that correct?

A. Yes, sir.

Q. Would you please read that memorandum?

2533 A. "Have just heard from Bob Sternberger and he said that there probably will be an increase——"

Q. Excuse me, who is Bob Sternberger?

A. He was the manager of the newsprint department of the Hearst Corporation.

Q. All right. Would you resume your reading, please?

A. "Have just heard from Bob Sternberger and he said that there probably will be an increase in Murray Bay price but he doesn't know how much or when. Regarding the letter which I wrote to him the other day he said he would have to give my questions some more thought. Regarding Coosa River contract they have suggested that we increase the period for another four years, that is from 1955 to 1969."

Q. That is a typographical error, it should be 1965 to 1969 instead of 1955 to 1969 because it says four years, is that correct?

A. That is correct. "I have agreed to that. Hearst Enterprises will prepare a contract to sell Coosa River newsprint to us under the same terms as now exist in contract between Coosa River and Hearst Enterprises."

Mr. BERNSTEIN: I offer P-121 in evidence.

Mr. RAICHL: No objection.

Mr. STEVENS: Objection as to NEA.

2534 The COURT: Received.

(Thereupon Plaintiff's Exhibit P-121, previously marked for identification, was received marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, I show you P-107 for identification. P-107 for identification purports to be an amendment to the newsprint contract between Coosa River Newsprint Company and Hearst Enterprises, signed by Bob Sternberger, and note paragraph two where it says: "Term", and read that to yourself.

A. (Witness examines document.)

Q. Note the first paragraph which says: "Supplementing the newsprint contract between the undersigned dated December 9, 1954, it is hereby agreed as follows:" Now, I ask you, Mr. Gorman, isn't it a fact that as a result of your agreement with Coosa River that Coosa River extended its existing contract with Hearst for a period of ten years, from January 1, 1956 and ending December 31, 1969, and that you agreed to it, and that you prepared or Hearst prepared a contract to sell Coosa River newsprint to International under the same terms and conditions as exist in the contract between Coosa River and Hearst Enterprises?

A. With qualifying letters that we would buy the newsprint from Hearst which they got from Coosa, provided we put up a building and erected a plant, and provided King gave us a contract which would make it possible for us, a failing company, to do it.

Q. With that reservation, it is true that you negotiated a contract with Coosa River, they insisted it be executed with Hearst because of Hearst's better financial——

A. I have no recollection of ever negotiating a contract with Coosa River.

Q. You have no present recollection of it, you don't deny it?

A. I deny it, I have no recollection of it, no recollection.

Q. You had recollection of telling that under oath to the Grand Jury?

Mr. RAICHLE: Show him where you claim he said that?

Mr. BERNSTEIN: The testimony, you read it.

The WITNESS: I didn't say I had a contract.

2536 By Mr. BERNSTEIN:

Q. Let's look at that again, Mr. Gorman, your testimony under oath in October 1960. Was your recollection clearer then than now?

A. Is this just what I read a moment ago?

Q. That is correct.

A. I didn't sign any contract there.

Q. You were asked this question: "Prior to the time of the acquisition of Greater Buffalo Printing was any determination reached in regard to going to the south?"

A. What are you reading?

Q. Page 972, line 13. I just read you that question.

Mr. RAICHLE: It is the one you read before.

By Mr. BERNSTEIN:

Q. At line 16 your answer was: "In about the year 1954——", and I invite your attention to the fact that the agreement between Coosa River and Hearst is dated December 16—December 8, 1954.

Mr. RAICHLE: That is confusing. Are you reading now?

By Mr. BERNSTEIN:

Q. I am resuming the reading: "I obtained for the first
2537 time a promise from the customer, Coosa River News-
print Company, that they would allow——"

A. Wait a minute. "I obtained for the first time a promise from the customer——"

Q. What customer?

A. I don't know what that means.

Q. Then you said: "A Coosa River Newspaper Com-
pany——"

Mr. RAICHLE: Newsprint company.

By Mr. BERNSTEIN:

Q. Your answer was: "A River Coosa Newspaper Com-
pany", it means a newsprint company?

A. Newsprint company, yes.

Q. Was it a newspaper?

A. Newsprint company.

Q. "That they would allow us to purchase newsprint and that the International Color Printing Company was trying to make a determination to go into the south.", is that correct?

A. Let me explain.

Q. You will explain later, I want——

The COURT: This is a very complex matter and to have him explain later, when it is all something new, it isn't of much value to me.

Mr. BERNSTEIN: I am sorry, your Honor.

2538 The WITNESS: I walked into the Coosa River News-
print Company in 1954 because I happened to be in
Birmingham and I thought maybe they had some paper to sell.
Up to that time they had none to sell. They had just previous

to my arrival had a Board of Directors meeting and they were going to contact me about selling me newsprint.

By Mr. BERNSTEIN:

Q. What year was that?

A. 1954, and they thought it was strange that I should happen in at that moment. They offered me paper for \$119.50, and the market price at that time I think was \$127.50. On that basis we thought we had a sign of light, something from behind the clouds to give use a little bit to go ahead on, and they would erect a building for us.

Q. Coosa River?

A. Yes, sir.

Q. Okay.

A. Shortly after that they found that I was not Hearst, they changed the price from \$119.50 to \$125.50.

2539 Q. Excuse me. Prior to that time did they think you were there as a representative of Hearst?

A. Apparently they thought it was the same.

Q. You and Hearst were one and the same?

A. Yes.

Q. Was this common knowledge throughout the industry that you and Hearst were one and the same?

Mr. RAICHLE: I object.

The COURT: Do you have any such knowledge?

The WITNESS: No.

The COURT: Then he can't testify.

The WITNESS: They assumed that. I couldn't help that. I didn't know they thought that.

The COURT: They were your only customer?

The WITNESS: King was the only customer. I think King probably let it be known from time to time that we were their contractor. People didn't differentiate. Eventually Coosa pulled out and said, "We can't give you the building, we can't give you the price", and the bottom dropped out. We were still willing to go along and consider using the paper even

2540 at that price, provided we could get a contract from King. Whether Hearst bought us or whether the Govins continued to own it or whether it was sold to somebody else, I thought a plant in the south was necessary and I was going along in the hope that something would happen and nothing happened.

By Mr. BERNSTEIN:

Q. Is there anything else you want to add to what happened in November of 1955, this is after Greater Buffalo acquired International's stock, and then Coosa River came to you and asked you to extend the Hearst contract for four years, from 1965 to 1969, tell us about that?

A. I have no recollection of that.

Q. You have no recollection of that?

A. No.

Q. Now, P-120 for identification is your letter to Mr. Frank Nicht, dated August 11, 1954?

A. That is right.

Q. Now, I invite your attention to the third—well, let's take the first paragraph: "I have been studying
2541 your letter of July 26th regarding speedy work on plans for southern plants." This is August 11, 1954, that is almost a year before Greater Buffalo acquired International, is that correct?

A. Yes, sir.

Q. And you say: "You said, 'I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer.'" You are saying there that that is what Nicht told you, that he wanted an arrangement with a newsprint mill, he wanted a newsprint mill that wasn't going to deal with any other supplement printer?

A. That is what he wanted, he was always assuming something.

Q. You wrote to him, telling him what he said to you. Let's get your answer. This is Joseph J. Gorman speaking in behalf of International Color, and Joseph J. Gorman says: "Now let us take each item separately. First and the most important we need to be certain of the mill contract, that is, the source of supply."

2542 A. Read the whole paragraph.

Q. What?

A. Read the whole paragraph, the first paragraph.

Q. I'll come back to that and you can add anything you want.

Mr. RAICHLE: Why can't you read it?

Mr. BERNSTEIN: I will, I will.

Mr. RAICHLE: Read it now.

Mr. BERNSTEIN: I want the record to be clear——

Mr. RAICHLE: Please don't shout every time I got to make an objection, will you?

Mr. BERNSTEIN: Mr. Raichle, let the record show you are shouting.

Mr. RAICHLE: I certainly am, to overcome the ungentlemanly noise you make every time I object, and I object to it.

Mr. BERNSTEIN: It isn't ungentlemanly, when I haven't finished my remarks and you interrupt, I must continue and to be heard I must raise my voice, that is only natural.

Mr. RAICHLE: That is a plea of guilty, an explanation, and not a good one. I submit that the time to read the paragraph is now so that what the witness has already been interrogated about would be found in context. That is consistent with your Honor's previous ruling.

Mr. BERNSTEIN: I will abide by your request, Mr. Raichle, in the interest of saving time, and I will begin reading from the beginning of the letter, the first paragraph of which contains Mr. Gorman's statement to Mr. Nicht, and then a quotation in which he quotes a letter received from Mr. Nicht, then he ends that quotation and then Mr. Gorman resumes his statement. The letter reads——

The WITNESS: Pardon me——

Mr. BERNSTEIN: The letter reads——

The WITNESS: Pardon me, where is the quotation ended?

Mr. BERNSTEIN: Excuse me, Mr. Gorman——

The COURT: This is the letter, isn't it?

Mr. BERNSTEIN: Yes.

The COURT: Read it.

Mr. BERNSTEIN: It reads as follows: "Dear Frank: I have been studying your letter of July 26th regarding speedy work on plans for southern plant. You said, 'I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to——' "

The WITNESS: Pardon me, there is no indication with a quote whether I said the next thing or he did.

Mr. BERNSTEIN: No, let the record be clear, I have been reading ever since the words "I am anxious to be in a position," I am reading what you in your letter have quoted as Nicht saying to you.

The WITNESS: That is right, then there is a quote missing. There is a question mark missing.

By Mr. BERNSTEIN:

Q. No, there is a quote after "mill".

A. That appears as if I said that—that would make it appear Nicht said the whole paragraph.

Q. You read to me what you contend——

A. This is what I think I said. There is no quote, therefore this looks like my answer: "Like you I would like to proceed with speed but great as my desire along this line may be I must also proceed with caution."

Q. That is Joseph J. Gorman talking?

A. I think so.

Q. You also think that Joseph J. Gorman is saying: "Setting up an operation like this cannot be done over night."?

A. That is right.

Q. That is Joseph J. Gorman talking?

A. That is right.

Q. Is Joseph J. Gorman also saying: "We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."? Is that Joseph J. Gorman talking?

2546 A. Yes, sir.

Q. Now, you have a quotation mark after "mill"?

A. Correct.

Q. That mark is incorrect?

A. What I said in that paragraph means, over and over again——

Q. My question to you is whether that quotation mark is incorrect?

A. That is correct.

Q. The quotation mark shouldn't be there?

A. No. I said that we have to get the presses, we have to make arrangements with the mill.

Mr. BERNSTEIN: If your Honor please, I show the Court the original document and I invite the Court's attention to the fact that except for the first two sentences and two words in the second sentence of the first paragraph, the entire paragraph is quoted. That would indicate from reading the document that Mr. Gorman is saying that was what Mr. Nicht reported to him.

His testimony on the stand is that he thinks the quotation is in the wrong place, that some part of that is Joseph

2547 J. Gorman talking and not part of the quotation. I am trying to ascertain from this witness what part of that first paragraph that appears in quotes is not a quotation of what Mr. Nicht said but actually what Mr. Gorman said to Mr. Nicht.

The COURT: We don't have Nicht's letter of the twenty-sixth anywhere?

Mr. BERNSTEIN: Well, I don't know, I don't have it in this group.

The COURT: If we have it—

Mr. BERNSTEIN: I will put it into the record. We have always had trouble getting those documents in.

The COURT: For the purpose of only perhaps determining what Mr. Nicht said, what comes from his letter. It would clear it up.

Mr. BERNSTEIN: If we have that letter I will offer it. That was only preliminary to what I wanted—

The COURT: All right.

2548 By Mr. BERNSTEIN:

Q. Now, Mr. Gorman, before I was interrupted I was going to this second paragraph, which is clearly Joseph J. Gorman's language isn't it? Is that Joseph J. Gorman's language?

A. Yes, sir.

Q. Is the rest of the letter Joseph J. Gorman's language?

A. I presume so.

Q. Is there any doubt in your mind?

A. I don't see any reason for doubt, no.

Q. Mr. Gorman says: "Now let us take each item separately." Are you referring to the items Nicht was saying to you?

A. I don't know whether I was referring to what he was saying to me or what I was saying to him. If I wrote the second paragraph, I am satisfied to go ahead with it.

Q. Your letter continues as follows: "First and most important we need to be certain of the mill contract, that is, the

source of supply." Now, I don't propose to read the rest unless you want me to.

A. Read the whole thing. I think you should read the whole thing, including the last paragraph.

Q. I intend to read the last paragraph at a later time.

The COURT: Read it.

2549 Mr. BERNSTEIN: I will read it now.

By Mr. BERNSTEIN:

Q. "We know that as of May 26th the mill people was just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he had in mind, but when I called to make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King Features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King." When you say, "with us" you mean International Color?

A. Yes.

Q. Resuming the quotation: "Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th." The next paragraph I don't propose to read, but you discuss labor and all that is necessary to make arrangement with the labor union in order to open the plant, is that correct?

2550 A. Yes.

Q. In the next paragraph you talk about press equipment and you talk about what you had discussed about rebuilding presses which you obtained from Baltimore, is that correct?

A. That is correct.

Q. That isn't the 2022 press?

A. No.

Q. Then you talk about how long the work will take, you talk about what presses are needed, and then in the last sentence you say: "The kind of presses we use depends on the kind of work available and, as you know, our southern work consists of mostly small runs with many plate changes." Then you say: "I would like to get all of this planning behind me

and therefore I am going to proceed just as rapidly as possible.

A. Whereabouts are you?

Q. In the first full paragraph on page two.

A. The first full paragraph on page two? What line?

Q. The first paragraph is headed "Regarding press equipment", and the next paragraph is what I am now reading: "I would like to get all of this planning behind me and therefore I am going to proceed just as rapidly as possible." Is that correct?

A. Yes.

2551 Q. Your last paragraph talks about flexibility, and at a later time this morning I represent to the Court that I will read this paragraph, go back to the details of it. The last sentence in that paragraph says: "Please be sure that I am giving every waking moment to development of plans for speedy operation in the south."

A. If you are going to read the last sentence I insist you read the whole paragraph.

Q. All right, I will take the time of the Court to read it now. "Regarding flexibility; when we speak about flexibility for 10's and 14's we have in mind two things, flexibility of equipment and also flexibility of union contracts." When you talk about 10's and 14's, you mean 14 and 10-page standards?

A. Yes.

Q. Later on in this document you talk about 8's and 20's and 8-page tabloids and standards; what are you talking about?

A. The same thing, units of 4.

Q. You are referring to color comic supplements?

A. Yes.

Q. You continue on saying: "In Peoria we do print 12's and we do print some 10's but we cannot print 14's in Wilkes-
2552 Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract." What do you mean by that?

A. A union contract, when we printed a 14-page section, called for the same number of men as when we were printing a 16-page section.

Q. And then you say: "Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4-page standards, 8-page tabloids, 8-page standards, etcetera, and also be prepared to make large number of plate

changes. Buffalo—" you are talking about Greater Buffalo?

A. Yes.

Q. "Buffalo may print one or two 8-page standards, I don't think either Buffalo or Dunkirk is printing any at this time." Again, you are referring to Greater Buffalo Press plant at Dunkirk and at Buffalo?

A. Right.

Q. "They are not printing any 4-page standards and the only 8-page tabloids they handle are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have." Do you mean International has flexibility for certain things Greater Buffalo doesn't have?

2553 A. For a slight percentage of our work we had flexibility Buffalo didn't have. I meant Dunkirk, Buffalo had it.

Q. Did you mean International was a better competitor to Buffalo?

A. No, absolutely no.

Q. I will resume the reading: "But in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts; you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past."

A. That is the crux of the whole thing.

Q. "Please be sure that I am giving every waking moment to development of plans for speedy operation in the south." Now, Nicht was always demanding of King—excuse me—Nicht was demanding of International greater flexibility, that is, the ability to print different size sections, as was required?

A. Correct.

2554 Q. And Joseph J. Gorman believed that with proper financing from King, with proper prices to International, that International could create a plant in the south that, together with Wilkes-Barre and Peoria, would provide the flexibility that King was seeking, is that correct?

A. Not entirely, no. It is much like changing from a male to a female after birth. We started with the presses set up wrong, and it is impossible to change them fully thereafter to give complete flexibility.

Mr. BERNSTEIN: I offer in evidence, your Honor, P-120.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: That is the letter he was reading from, any objection?

Mr. RAICHLE: No.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-120, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I offer in evidence P-107, that is the amendment to the newsprint contract between Coosa and Hearst.

2555 Mr. STEVENS: Objection.

The COURT: You have no objection, Mr. Raichle?

Mr. RAICHLE: No.

The COURT: I understand, Mr. Stevens, your objection is that these things are between others than yourself?

Mr. STEVENS: Correct.

The COURT: It would only be pertinent if conspiracy was established?

Mr. STEVENS: Correct.

The COURT: And you were involved by a finding?

Mr. STEVENS: Correct.

The COURT: I will receive it subject to those findings, whatever they may be.

(Thereupon Plaintiff's Exhibit P-107, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Isn't this the fact; that two months before you, Joseph J. Gorman, concluded the transaction whereby Greater Buffalo purchased the stock of International, International had
2556 drawn plans for a 30,000 square foot building in Sylacauga and that you, Joseph J. Gorman, told King that you can't proceed with the purchase until King signed a long-term contract for a price that would continue dividends to the owners, as well as guarantee to amortize the cost of the plant within a reasonable period?

A. Yes, sir.

Q. Isn't it true that two months before you, Joseph J. Gorman, concluded the transaction whereby Greater Buffalo purchased the stock of International, in behalf of International you authorized the Chamber of Commerce in Sylacauga to purchase a site there, isn't that true?

A. I don't recall that I authorized them to purchase a site. no.

Q. Is it true that several weeks before the transaction was concluded whereby Greater Buffalo purchased International, you, Joseph J. Gorman, representative of International, told the Chamber of Commerce to proceed with grading the road?

A. That is right, I did.

Q. And isn't it a fact that after the purchase, you, Joseph J. Gorman, as International's representative, told the people in Sylacauga that they would have to sell bonds in an amount which would give International a satisfactory building and then lease the building—

A. When did I do this?

Q. After the purchase?

A. What date?

Q. That was—

Mr. RAICHLE: If there is a letter, show it to him.

Mr. BERNSTEIN: I want the Court to see the whole picture before we are involved in minute details of this transaction.

By Mr. BERNSTEIN:

Q. That was September 27, 1955.

A. That was after the sale?

Q. That is correct. Excuse me, the grading is—

A. I told them to grade, they begged me to tell them to grade. They wanted us down there, and I wanted to keep the land, I wanted to keep whatever promise I could get for the paper, in the hope that either King or the Govins or Buffalo or somebody would come through with the cash we required.

Q. Isn't it true that later it was decided that you would build and finance your own building and receive a gift of land from Sylacauga because it would be cheaper?

A. I don't think it was quite that way, no. In July of 1955 we had no commitment to Sylacauga, none whatever. We were—

Mr. RAICHLE: I'm sorry, I couldn't hear.

The WITNESS: In July of 1955 we had no commitment to Sylacauga. I wrote 30 letters on July 15, 1955 to various cities

in Tennessee, asking them for the same concessions that we hoped to get from Sylacauga. I got answers back from at least 20. That was after the sale took place, after I talked to them about grading the land, and they knew I was in Tennessee. They talked to me while I was there, and they hoped that we would not find anything that would keep us in Tennessee rather than coming back to Alabama.

Mr. RAICHLE: You were looking for a place in the south.

The WITNESS: Somewhere, and we didn't commit ourselves to Sylacauga. We could get paper elsewhere, by this time we were not getting a special price.

2559

By Mr. BERNSTEIN:

Q. Is it a fact that the Industrial Development Board of the City of Sylacauga accomplished what you asked them to do, of having the city deed the land as a gift, and that International proposed to build a building and accept the land, and at the last minute you requested that Sylacauga deed the land to Greater Buffalo Press with the understanding that it would be leased to International?

A. I have no recollection of that.

Q. Do you recollect at that time that it was your intention that International would operate the plant and that it would print King Features down there just as it was doing in Wilkes-Barre?

A. There was, for a brief period of time, a thought that we would operate the plant. As a matter of fact, I think I was president of the company for a while, if there was such a company. That was changed shortly, I immediately got out of the picture.

Q. Was there a decided change after the Court issued the injunction in 1961?

A. At that time I was completely out of it, long before that.

Q. Let's get the details of some of these things and refresh your recollection. Now, I show you P-122 for
2560 identification——

Mr. RAICHLE: What is the date of that?

By Mr. BERNSTEIN:

Q. P-122, dated April 11, 1955, and it is a letter from you to Mr. Nicht, and this was before—April 11, 1955 is before Greater Buffalo acquired International's stock?

A. Yes.

Q. You say to King Features: "Since you are going to meet with Mr. Watt next week it has occurred to me that it would be a good idea for you to have some up-to-date information on probable newsprint requirements in 1956 and 1957. I believe your contract calls for approximately 2500 tons in the year 1956 and then 8000 in 1957." Are you talking about the contract between Hearst and Coosa River Newsprint?

A. I guess so, yes.

Q. Then you send him a schedule showing runs and other details concerning that. I don't propose to read that now. Then in the next paragraph you say: "Here is a brief review of what we are doing along mechanical lines right now. As you are fully aware we have two plants in Wilkes-Barre which we call the Parsons and the Sheldon plants. The Parsons was 2561 the original plant. It now contains five single width presses. In our Sheldon plant we have five double width presses and one single width press." In the next paragraph you tell him about your plans about moving those—

A. Just a minute. There is no doubt we were making plans to go there if we could get a contract.

Q. You are making detailed plans now?

A. Certainly we were making plans.

Q. Look at page 2, the last—the next to last sentence: "As you already know we have long ago fully considered the sites in the Coosa River area, we have made arrangements with the Sylacauga Chamber of Commerce, we have plans drawn up for building about 30,000 square feet, as against a much larger building which Greater Buffalo is planning to erect at Lufkin, but we cannot proceed with purchase of ground in Sylacauga nor with the letting of contract for building there until we have concluded arrangements with you for the signing of a long-term contract which will continue dividends to the owners as well as guarantee amortization of cost of the new plant within a reasonable period. As you can well understand no bank is interested in advancing money except on the basis of a sure return of same. The purpose of this letter is not so much to discuss contract as to keep you advised as to what 2562 progress we are making. Will write further, probably Tuesday or Wednesday, about other features which I do not have time to discuss at this writing." Then in—

The COURT: Wait a minute, excuse me. Now, as I hear that, Mr. Gorman is telling King, Nicht, that he is proposing to have

a plant down in Sylacauga in hot competition with Greater Buffalo at Lufkin. What is wrong with that?

Mr. BERNSTEIN: That is good. That is why—

The COURT: This is the time when Nicht gave him a horse laugh, that is what he gave him as a proposal, as far as money, as I get it. Then in due course that Sylacauga thing winds up in Greater Buffalo Press. But do you think that letter evidences some conspiratorial tendency at that time?

Mr. BERNSTEIN: This evidence isn't used to evidence conspiratorial intent.

The COURT: I thought you were always holding here from the beginning of the interest of International in the 2563 south, it was an under the table deal going on.

Mr. BERNSTEIN: The under the table deal was the deal between Nicht and Koessler, not between Gorman, representing International, and Koessler. Gorman, as International operated, considered himself Greater Buffalo's competitor. Gorman, as far as he was concerned, if the competitor bought him out and was able to continue him on as president and continue to get the revenue in there, and continue King's printing, continue to operate the plant the same as before, Gorman was far happier than he would be pinching pennies with Nicht and being at the mercy of Nicht.

The COURT: I thought you were always considering Gorman as part and parcel of the plot?

Mr. BERNSTEIN: No, the plot is between Koessler and Nicht. Joseph J. Gorman is the International plant operator 2564 who is trying to operate this plant as a separate entity, considering—

The COURT: All I wanted to say; you agree that when that letter was written Mr. Gorman was indeed striving to save his own hide and his fellow man, and pay Mazie her stipend, right?

Mr. BERNSTEIN: Absolutely. At the same time—this is most significant, your Honor—at the same time he was, whether knowingly or not, and I will say unknowingly for the purpose of this lawsuit because I don't propose to offer any evidence otherwise; unknowingly at the same time he was feeding the fuel of this conspiracy.

The COURT: I wanted to know whether you thought this man was part of some heinous plot at that time?

Mr. BERNSTEIN: No, no, no, he is proceeding along with plans he made before.

The COURT: I have it now. All right.

By Mr. BERNSTEIN:

Q. Now, the letter that I just read was dated April 11, 1955.

Ten days later, on April 22, 1955—

2565 The COURT: I have been going since seven, frankly, if I am weary there is not much use in my listening. Let's take about fifteen minutes and we will go on until one o'clock.

(Thereupon the Court was in recess at 11:05 a.m.)

(Proceedings resumed, pursuant to recess, commencing at 11:35 a.m.)

The COURT: Well, gentlemen, I thought we would run until about one o'clock.

Mr. BERNSTEIN: I offer in evidence P-122. That was the letter about which the witness just testified.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-122, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-122, Mr. Gorman is your letter to Mr. Nicht,
2566 dated April 11, 1955, two months before Greater Buffalo's acquisition of International. I show you P-123 for identification. P-123, dated ten days after P-122, is a letter that you wrote to Jack Nealeans, Secretary of the Chamber of Commerce, Sylacauga, Alabama, dated April 22, 1955, and you say: "Dear Jack: I am writing this following our telephone conversation of this morning when I told you that we had definitely selected Sylacauga as the location for our southern printing plant and that you should go ahead with the purchase of Site Number 1. I told you that we wished to keep the matter confidential until such time as we can clear statement with King Features Syndicate and you advised that you might find it necessary, in view of this fact, to get an extension of the option for another two weeks or thirty days. I wish to emphasize, however, that we do not desire to take a chance on losing the site. In other words, we want the matter held as confidentially as possible until such time as we can clear through King Features but this is definitely your authority to go ahead on our behalf with the purchase of the site we selected." So that, Mr. Gorman, on April 22, 1955, it is true that you authorized the secretary of the Sylacauga Chamber of Commerce to go ahead on Internationals behalf to purchase the site that you selected, is
2567 that correct?

A. That is correct.

Mr. BERNSTEIN: I offer P-123 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: You have no objection?

Mr. RAICHLE: No objection.

The COURT: I will assume you have none unless you say so.

Mr. RAICHLE: I have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-123, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Several weeks before Greater Buffalo purchased the stock of International, according to P-114 in evidence, which is your letter to Mr. Nealeans, Secretary of the Chamber of Commerce of Sylacauga, you write this: "Dear Jack: I suppose it seems that we are somewhat dilatory in our move to give you a statement regarding location in Sylacauga but actually there are many things involved which are difficult to fully explain to persons not familiar with the newspaper readyprint situation. Confidentially, we are going to Sylacauga.

We may not be able to give you a full statement for the public by June 7th for the reason it is necessary for King Features Syndicate to clear up certain contractual matters with newspapers beforehand. I have every hope that I will be able to contact you definitely by June 7th, but if not I wish to confirm what I said in previous letter that you should purchase the land. Also, as per our telegram of this date, please proceed with the grading in accordance with our understanding that the road will be lowered so that at no point will the roadway be more than from three and one-half to four feet higher than the industrial site. I wish to impress upon you that this is a very responsible company——" you were talking about International, were you not?

A. Yes, sir.

Q. "And King Features Syndicate is fully responsible and just between the Sylacauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylacauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided."

A. I was stalling.

2569 Q. Sir?

A. I was stalling, even to the point of telling him to go ahead with the site.

Q. Why?

A. Because I had no definite plans of what we were going to do. He pushed me and came to Wilkes-Barre and nagged at me, and I finally said, "All right, go ahead."

Q. Now——

A. I had no definite plans as to press equipment, money, contract, newsprint.

Q. Now, I want to get your state of mind, your attitude toward dealing with people. Here you told the Chamber of Commerce to purchase the land, you told them to incur expenses for grading the land, and at that time you were just leading them on, is that correct?

A. They were satisfied to do that, take a chance. They knew that. Confidentially, in conversation with them they knew all about it, they knew our circumstances.

Q. Did you tell them you didn't mean what you said in the letter?

A. No, I told them I hoped we could.

Q. You were telling them as far as you were concerned everything was going through?

A. I still was telling them to hold back, I was not sure.

The COURT: I want to ask you, do you now claim
2570 that image of Gorman has now changed?

Mr. BERNSTEIN: No. I say Gorman is not participating in the conspiracy.

The COURT: Why did you ask him that? He is trying to salvage for himself and, he said previously, he had a lot of concern with long and faithful workers, and he has this constant drain on him for money. Now, I don't understand why you attack him at this point as though he knows something.

Mr. BERNSTEIN: My purpose, Your Honor, is to demonstrate through this witness's testimony that he colors his testimony to suit the occasion, that if he thinks it will be more persuasive——

The COURT: I am talking about then, what he then was trying to do.

Mr. BERNSTEIN: I contend he was—I disagree with the witness's statement—I contend that he then had every intention of going ahead with the transaction——

The COURT: And be competitive?

2571 Mr. BERNSTEIN: And be competitive with Greater Buffalo, yes.

The COURT: Maybe it is a matter of acoustics. I gathered from your talk to Mr. Gorman, your examination, that the image changed, he is now becoming a co-conspirator.

Mr. BERNSTEIN: No, Your Honor. I do not contend that he is a co-conspirator with Greater Buffalo at any time.

The COURT: He is doing his best to get something that will keep his job and keep his workers going and keep the family happy.

Mr. BERNSTEIN: And keep International in competition with Greater Buffalo, yes, sir.

Mr. RAICHLE: No. Why do you—I say this unreservedly, why do you make a flat misstatement of fact? This witness testified time and again that International was not in competition with Greater Buffalo, he testified that King Features was in competition with Greater Buffalo Press. Why do you
2572 misstate the testimony when you know the fact to be to the contrary?

Mr. BERNSTEIN: I know the fact——

The COURT: Here, gentlemen, I understand that. This is the working arm of King Features, the printing plant, International. I know all about that. There is no reason to get excited. I wanted to know what you thought of Gorman, whether you are trying to give me the impression—I had the impression suddenly you thought the hue changed.

Mr. BERNSTEIN: No. Let me explore that.

By Mr. BERNSTEIN:

Q. At this time, this is June 3, 1955, the sale of Greater Buffalo was June 16, 1955——

Mr. FELDMAN: June 25, 1955.

By Mr. BERNSTEIN:

Q. The sale of International was June 25, 1955. Here we are talking about June 3, 1955. At this time you were negotiating with King Features for a contract, is that correct?

2573 A. Yes.

Q. Clarify this, please, in all honesty. Were you contracting with King Features knowing that Greater Buffalo was going to acquire International and therefore Greater Buffalo would own the stock of International and have a contract with King?

A. I did not know until Greater Buffalo actually bought the stock.

Q. So that your negotiations with King at this time was not to get the same price as your preceding contract, but to get a price under a contract that would give the Govin family the same dividends and would permit sufficient revenue to finance a plant down south, is that correct?

A. That is right.

Mr. BERNSTEIN: Did Your Honor get the last——

The COURT: Yes, I did.

By Mr. BERNSTEIN:

Q. Now, according to P-115 in evidence, which is your letter to Mr. Frank Nicht, this is dated September 27, 1955, and this is after Greater Buffalo has actually purchased the International stock, here is what you tell him: "Dear Frank: Regarding the announcement made in Sylacauga by me. It was
2574 primarily intended for Sylacauga consumption and I made it clear at that time that we had chosen Sylacauga as the site of the southern plant and would build a plant there 'provided final financial and building plans can be eventually agreed upon.' In my talk to the people at Sylacauga I emphasized fact that they would have to sell bonds in the amount which would give us a satisfactory building and they would also have to give us a lease which would be satisfactory. We are committed to Sylacauga provided that our conditions are met, but before we agree to sign lease we must know that people of Sylacauga will give us the kind of building we want, and they cannot do anything about this until after our building plan has been completed and bids received. Actually I don't think there should be too great a hurry about publicizing generally our southern plans. I mean that we should not put too much publicity in Editor and Publisher, newspapers and other publications. Certainly there seems no reason why you should not contact all of the newspapers involved and notify them that you are the selling agent for International Color Printing Company and that when a southern plant is finally established, all sales for work produced by International Color Printing Company will be in the hands of King Features Syndicate. I
2575 just want you to know that no final papers have been signed for a Sylacauga plant and none can be signed until after building plans have been completed and lease terms

agreed upon." You are then talking about a lease from the people of Sylacauga to International, is that correct?

A. That is correct.

Q. Now P-124 for identification is your letter to the Chamber of Commerce on March 29, 1956, and this is a few months shy of a year after Greater Buffalo has acquired the stock of International, and again International Printing Company is writing to the Chamber of Commerce, and you say: "Dear Jack: We have, of course, received your proposed agreement and your request for more information from International Color Printing Company and Greater Buffalo Press. We have gone over the agreement carefully and both Buffalo and Wilkes-Barre—" —were you referring to Greater Buffalo Press and International?

A. Yes, sir.

Q. "Were considerably disturbed by the fact that we would have to pay 5% instead of 3½% which was the figure originally offered. No doubt, you realize this difference in interest amounts to almost \$100,000 on the principal involved. 2576 This excess payment, which will result from the difference between 3½% and 5%, is so great that we have decided it would be much better for us to own our building and with this in mind we plan to start negotiations either with insurance companies down your way or with the local banks with the view to obtaining a mortgage very similar or better if possible than the one you had in mind. We have the necessary money for the down payment and we would like to talk to you and Mayor Howard concerning the turning over of the land to us with the understanding that we will start erection of plant in Sylacauga." When you say "us", do you mean International?

A. International was at that time a subsidiary of Greater Buffalo, and by that time Greater Buffalo already told us to purchase Press 2022 and put it wherever would be the best site. When I was speaking then I was not speaking of the old International Color Printing. I am speaking of International as a subsidiary of Greater Buffalo Press.

Q. "Will you let us know if you can come to Wilkes-Barre and when? Since the City has been so cooperative and since Mayor Howard has shown such a deep interest in our plans. I sincerely hope that he will be able to make the trip with you."

2577 A. All that proves is that at that time we hadn't even decided on any kind of arrangement with Sylacauga.

Q. Do I understand this letter to mean that the Secretary of the Chamber of Commerce had under consideration that the people of Sylacauga would sell bonds, they would build a building and lease the building to International, is that correct?

A. Yes.

Q. Then you learned that the money they would have to pay, the interest on the bond, was 5% rather than 3½%, as you believed, and you believed the lease would be so much higher because of that, is that correct?

A. That is right.

Q. So therefore there was a change in the plans and it was decided that the building would be built by International as a subsidiary of Greater Buffalo Press?

A. At that time, yes.

Q. And that International would do its own financing through insurance companies and banks?

A. International and Buffalo.

Q. And that the plant would be operated by International, is that correct?

A. There was no—very vague, very indefinite about what would happen at that time. We would—we were
2578 going to operate under whatever arrangement Buffalo would outline. The plans we had in the beginning for a 30,000 square foot building, and so forth, were completely and absolutely worthless.

Q. And—

Mr. RAICHLE: And never adopted.

Mr. BERNSTEIN: I offer P-124 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-124, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence P-125 which is another letter from Mr. Gorman to Mr. Koessler on the same subject, just supplements the preceding letter. I won't take the time to read it at this time unless the Court wishes.

The COURT: The nub of all this, Mr. Bernstein, you are saying that even though Mr. Gorman was being used, if you will, as the apparent head of International; Hearst, that is,
2579 King, and Buffalo, Greater Buffalo, were designing to

monopolize the entire south at least, and other places, I take it, in the printing of these color sections?

Mr. BERNSTEIN: Yes, substantially correct, with one minor exception. They were conspiring that Greater Buffalo would monopolize the printing and King would share in the sale with Greater Buffalo.

The COURT: King would sell?

Mr. BERNSTEIN: Exclusive, there wouldn't be any—Greater Buffalo Press wouldn't do business with NEA or any other syndicate or anyone else, and Koessler was leading King on, and King was being led on by the fact that International, with whom it had been doing business all along, a virtually captive plant, was making arrangements with the people in Sylacauga to buy land and build a building, and King was led to
2580 believe that it was going to be the exclusive seller for all of the printing that International was going to do in Sylacauga.

The COURT: You further claim Koessler double-crossed—

Mr. BERNSTEIN: That is correct, but not at this particular time. He was leading them on.

The COURT: Mr. Raichle, I only ask these questions to get things on focus from time to time. If you would like to say something?

Mr. RAICHLE: No, I wanted to participate in an effort to clarify. Then, as I understand it, you claim that instead of a conspiracy between King and Koessler, you claim some course of action on the part of Koessler—when I say Koessler I mean Greater Buffalo Press—which would make King the victim and Koessler the culprit?

Mr. BERNSTEIN: I say that each one was the victim of each other, and in trying to—

Mr. RAICHLE: That is a funny conspiracy.

2581 Mr. BERNSTEIN: Yes, it is a very unusual kind of a conspiracy, Mr. Raichle. It is one in which Mr. Koessler is trying to seek self help, claiming he was the victim because he can't get the copyrights. Nicht, on the other hand, is claiming he is being the victim because he offered to go into this conspiratorial scheme with Koessler, at the same time Koessler was dealing with NEA unknown to King. That is what makes this conspiracy hard, that is why we need in this lawsuit to cure both situations, to prevent each one from being a victim of the other, and thereby protect the public.

The COURT: To go back to my opening remark when we resumed, I asked you about that. I said, "Just what is happening, are people healthy, I took off the restraint on Sylacauga, right or wrong, when I learned about this man at Southern
2582 Color sending copies of my decree around, et cetera."

Now, what do you think has happened that makes everyone a healthy printer and seller, if you will, of color comics by reason of anything I have done or you have done, or is that nature taking its course? What is his name?

Mr. BERNSTEIN: Hornady.

The COURT: Hornady apparently is doing all right. He hasn't had the windfall, at least in my judgment, that I thought he was trying to get. The other names don't come to me immediately, who you are trying to protect. I don't criticize you at all, I laud you for it if you thought there was something in the wind. They seem to be doing quite nicely.

Mr. BERNSTEIN: There is still a problem. I think the problem is this—

The COURT: This has succeeded; Sylacauga is going full tilt, Southern Color is going full tilt, the thing in Texas, Lufkin, is going full tilt, and I suppose Greater Buffalo is going full tilt. If this were the image today, I wonder if you would have launched this suit?

Mr. BERNSTEIN: Yes, we would have launched the suit because there is still another portion that your Honor hasn't touched on which needs to be cured, which is a cancerous situation, and that is the opportunity for other competitors of Greater Buffalo not to be in a position that Koessler is in and be at the mercy of the syndicates.

The COURT: Who is a potential, give me one?

Mr. BERNSTEIN: Acme on the west coast; Eastern in New England.

The COURT: Acme was a defendant here?

Mr. BERNSTEIN: No, your Honor.

The COURT: Pardon me. We had an officer from Acme here?

Mr. BERNSTEIN: No.

Mr. FELDMAN: On the injunction.

The COURT: You see, I want to know who is hurting and why.

2584 Mr. BERNSTEIN: I say there are four categories of people being hurt. Greater Buffalo is being hurt because—

The COURT: Greater Buffalo?

Mr. BERNSTEIN: Koessler testified——

The COURT: I don't assume they are going to complain Who else?

Mr. BERNSTEIN: But——

The COURT: They are defendants here waiting for me to either put the clamp on them or not. I don't think they are complaining. Give me your complaints.

Mr. BERNSTEIN: I don't have any complaints except the Government is the complainant here. Southern Color——

The COURT: I remember vividly that the cost didn't come up despite labor costs, and so forth.

Mr. BERNSTEIN: Southern Color is being hurt. Southern Color——

The COURT: That is Hornady?

Mr. BERNSTEIN: Yes.

The COURT: I asked you in the opening statement—
2585 maybe you didn't want to answer it then—I said, "Is Hornady getting along nicely?" I think you said yes.

Mr. BERNSTEIN: Well, he is under restraint, he doesn't have the opportunity to do the printing for any newspapers being printed by King or NEA without being coerced into the tie-in of the features. He is in the same position Mr. Koessler complains he is in.

The COURT: Right today?

Mr. BERNSTEIN: Right today. You can't cure that situation unless——

The COURT: Is that proof right now?

Mr. BERNSTEIN: We will prove that.

The COURT: When are you going to do this?

Mr. BERNSTEIN: Before Friday we will do this. This is the whole point.

The COURT: We have been together many times. I admit I try all kinds of cases and every day there is something new, as we remarked lightly this morning. I wondered if that was in the case?

Mr. BERNSTEIN: It is.

2586 The COURT: Already?

Mr. BERNSTEIN: No, it will be when we come to the tie-ins against NEA.

The COURT: I wondered if I had forgotten something.

Mr. RAICHLE: If your Honor please, I am consumed with astonishment at the statement of counsel. Let us remember and never forget that he, representing the Government, has entered into a consent decree which consents, as far as King is concerned, to the conduct that he now criticizes. If it exists today, it exists because of him.

Mr. BERNSTEIN: I deny that categorically.

Mr. RAICHLE: It is the fact and you know it.

Mr. BERNSTEIN: I do not know it, it is not the fact, I deny it. Unless the Court wants to go into it, I do not prefer to.

Mr. RAICHLE: The Court knows it, the Court has knowledge of its own decree——

Mr. BERNSTEIN: I deny it.

The COURT: Gentlemen, I will hear that kind of discussion in due course. I suppose this happens to you elsewhere, where the Court interrupts. I am the finder. I couldn't do this before a jury. I must do certain things, I have certain impressions like a juror, and I ask you from time to time to talk with me. All right.

Mr. BERNSTEIN: I understand, your Honor.

Mr. RAICHLE: I wish he would state once and for all which of the many shifting and ever changing positions he now takes. Does he say there is a conspiracy existing today between King and Greater Buffalo Press?

Mr. BERNSTEIN: Your Honor——

Mr. RAICHLE: Yes or no.

Mr. BERNSTEIN: If your Honor wishes me to answer——

The COURT: I would rather get on with the witnesses because we, as lawyers, can fit into things better than any of the witnesses who have their own problems. Our business is being here, theirs isn't, except when required. All right.

By Mr. BERNSTEIN:

Q. P-118 in evidence consists of a letter dated June 26, 1956, from you to Mr. Cecil Waldrop, chairman of the Industrial Development Board of Sylacauga. There is attached to that a memorandum to Mr. Gorman, dated June 18th, that is a two-page memorandum. In your letter—this is a year and a day after Greater Buffalo purchased the stock of International—you say to the Industrial Development Board of Sylacauga, as president of International: "At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans——" —that is the same

Jack Nealeans that was Secretary of the Chamber of Commerce?

A. He was.

Q. You had been negotiating with him for a site for how long; since 1954?

A. Approximately, yes.

Q. "—and subsequent meetings held in Sylacauga, we were offered as a gift from the citizens of Sylacauga a clear title deed to a 3.64 acre plot of ground located at 908-934 West Fort Williams as now graded.—" —that is the grading they did 2589 that you had said a year earlier to proceed with?

A. There might be some additional grading as a result of the fact that our plans were null and void and worthless. New plans from Buffalo possibly called for a different grading. Our plans were out of the picture. Had we erected a building, as we had planned, or sent presses down there, we wouldn't have lasted a year.

Q. When you say "we" you mean International?

A. Yes.

Q. Then I resume reading: "—with agreed upon power, gas, water and sewage facilities available upon this property. In consideration for the gift of land we agree to proceed within ninety days, or as soon thereafter as possible, to put up a plan building of approximately 45,000 square feet and generally the same as the B & B drawings and specifications of which you have copies at our own expense and by means of our own financing." You mean International was going to—

A. International, as a subsidiary of Greater Buffalo.

Q. "We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least 100 people." You mean International as a subsidiary of Greater Buffalo?

A. Yes.

2590 Q. Then you said—there is a last paragraph that I won't read. Then on the—excuse me—on the second page of P-118 there is a letter to a Mr. Waldrop, Industrial Development Board of the City of Sylacauga—can we have that marked P-118A in evidence?

(Thereupon letter referred to was marked P-118A and received in evidence.)

Mr. BERNSTEIN: I misdescribed P-118. P-118 consists of these two letters dated June 26th, and a copy of the June 18th

memorandum to Mr. Gorman.

By Mr. BERNSTEIN:

Q. Now, inviting your attention to P-118A in evidence, dated June 26, 1956, you say: "Dear Mr. Waldrop: Supplementing our letter of June 26th, concerning the plot of ground situated at 908-934 West Fort Williams which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our parent company, The Greater Buffalo Press, Inc., Buffalo, New York. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which will be in the name of The International Color Printing Company." Is that correct?

A. For the moment we thought that was the way we would proceed.

Q. As of that time, June 26, 1956, International had a contract with King which provided that International would print for nobody else except King, unless with their permission?

A. That is right.

Q. So that if your plan was going to go through, International would operate the plant at Sylacauga, and then the only one, contractually, it could print for there would be King?

A. According to the contract.

Q. Is that correct?

A. Yes.

Q. Did you tell that to Nicht at the time?

A. I don't recall discussing—I talked to Nicht about so many things on so many occasions—I have no idea of many things I said to Nicht.

Q. Now, at that time it is true, is it not, that you, 2592 Joseph J. Gorman, considered International a separate plant, separate and distinct from Greater Buffalo Press, operated independently, even though it was a subsidiary of Greater Buffalo Press, isn't that correct?

A. To some extent. In other words, I operated the Wilkes-Barre plant with very little interference from Buffalo. What I got from Buffalo was advice as to equipment, changes in equipment, and so forth, but they let me run the thing pretty much as I saw fit.

Q. Does that mean in regard to the prices that you were charging King?

A. Generally speaking, yes. We quote our own prices for determining a price on an individual run. It was entirely different in Buffalo.

Q. Is this a fair summary; that your relationship with King as a printer, International, continued on pretty much the same after Greater Buffalo acquired International as it had before?

A. Yes, Nicht was just as tough afterwards as before.

Q. For all external appearances, everything was pretty much the same?

A. Externally, yes.

Q. Now, is this a correct summary of the situation; Dixie Color Printing Corporation—now by these questions
2593 I am trying to get your present recollection and I will elaborate on this with documents and we will go into details—initially, is it your present recollection that Dixie Color Printing Corporation was organized on or about April 18, 1957?

A. I don't know.

Q. Is it your recollection that until 1961, when this Court issued an injunction prohibiting International's assets from being used in Sylacauga, International's employees implemented Greater Buffalo's policies by doing everything necessary to prepare the Sylacauga plant for operation, including the installation of equipment?

Mr. MOORE: I object to the form of the question.

The COURT: Yes. I remember those days of the argument of the injunction, and kind of a slender man—I can't think of his name—went down there. Did all the employees facilitate in every way, is that what you said?

Mr. BERNSTEIN: I said it was International—that even though after Dixie Color was organized, even though Dixie

Color was organized—do you know whether or not Dixie
2594 Color Printing is operating that plant today?

The WITNESS: Yes.

Mr. BERNSTEIN: It is?

The WITNESS: Yes.

Mr. MOORE: We have a long record on this case, you were not here, but we took testimony before his Honor for two days of just the things you were bringing out. If you want to put it in, put it in.

Mr. BERNSTEIN: If your Honor please, I am trying to present these facts in a fashion so that the Court can see the whole

picture as it goes along. Some of the facts in the record have been done before and are not in this record. They are relevant to what I am going—

Mr. MOORE: I am trying to help out. We have gone into it.

The COURT: What was done down there, there was some alert fellow, about 40, thin, who was kind of a key man, that went down there and he and others went in there and
2595 took care of housing and many other problems, all with a view of starting up.

Mr. BERNSTEIN: That is right. So that after Dixie Color was organized, I gather that Greater Buffalo will stipulate that International—

The WITNESS: Joe Clinton.

Mr. BERNSTEIN: He was there for a year?

The WITNESS: He didn't go until 1960.

Mr. BERNSTEIN: He was there for a year, that was after Dixie was organized?

The WITNESS: He is still there.

Mr. BERNSTEIN: He was there as an International employee for a year?

The WITNESS: Whether he was on our payroll for that year or not I don't recall, but he was really there as a Buffalo employee.

Mr. BERNSTEIN: Will defendant stipulate he was an International employee—

The WITNESS: Up to 1960.

Mr. BERNSTEIN: —and Greater Buffalo later reimbursed International for—

Mr. MOORE: Defendants will stipulate the entire record, which the Government participated in making before this Court for three days, where testimony was taken on each of these subjects at great lengths and all these documents you are going into. That record—we will stipulate the whole record.

Mr. BERNSTEIN: Well, I accept the stipulation. Then we will incorporate, as part of the record—

The COURT: There wasn't any question, as I recall it, it's a long time ago, that when the thing began to hum, Clinton and others went at it full tilt to make it go and hum good and hard.

Mr. BERNSTEIN: But the point I am trying to ascertain through the inquiry of this witness is International's role in this thing. International started in——

The COURT: Go ahead, I don't know anything about it.

Mr. BERNSTEIN: That is what I want to know.

Mr. MOORE: If we are going to stipulate in
2597 the other record, I am not going to stipulate it in and have you do it all over again.

The COURT: Do this—excuse me, gentlemen—do this, because I know indeed you were not here, Mr. Bernstein, Mr. Feldman was, have you got it with you?

Mr. BERNSTEIN: Yes.

The COURT: Look at it and see if it suits your purpose or view.

Mr. BERNSTEIN: We have. There are certain parts that the Government considers irrelevant to this proceeding at this time. The Court was focusing on other points at the time. The only——

The COURT: You don't want some of the stuff that is in there?

Mr. BERNSTEIN: I have no objection to the Court considering it. I will contend that it is irrelevant. I don't want it to be charged that the Government is offering this claiming relevancy.

The COURT: You are stipulating, both sides, if
2598 Clinton and others were recalled they would now so testify?

Mr. BERNSTEIN: Right.

The COURT: There is no objection to relevancy, as I get it, that has any bearing. You want me to take that testimony as part of the Government's major case?

Mr. BERNSTEIN: Yes, with this reservation, that there are parts of that testimony that the Government does not wish to offer. It has no objection to the defendant offering it and being received, but it doesn't want to be, at a subsequent time, charged with estoppel, that this is information that the Government itself offered in its case. Otherwise, it has no objection to the Court considering this evidence as long as it preserves its rights to argue some of these things were not so or in conflict with other things that were said, and so forth. With that reservation, the Government has no objection to
2599 putting that in evidence.

Mr. MOORE: Maybe I'm a little stupid——

The COURT: Can't you sit down and comb that nice and fine between yourselves? I don't want to take so much time. Do you want to consider that position?

Mr. BERNSTEIN: It will take more time than discussing this. I had three more minutes, and if I hadn't been interrupted——

The COURT: All right. The stipulation is withdrawn now, is that correct?

Mr. BERNSTEIN: No, I will abide by the stipulation.

The COURT: Wait a minute. You want to go further and beyond. You, I assume, want to reserve your offer of a stipulation. Let's hear the question, maybe you will go along with it.

By Mr. BERNSTEIN:

Q. To summarize it, Mr. Gorman, International prepared the press in Wilkes-Barre?

A. Under Walter Koessler's direction.

Q. International sent six men to Sylacauga for a year 2600 to set up the plant, is that correct?

A. And Greater Buffalo paid their wages.

Q. Paid to International the wages, is that correct?

A. We paid the wages, Greater Buffalo paid us.

Q. When you say "we" you mean International?

A. International, of course, I didn't do it.

Q. Prior to Dixie's organization, International purchased the press from Hearst and was later compensated by Greater Buffalo, is that right?

A. At Walter Koessler's direction.

Q. What do you mean?

A. The presses we had in mind, I told you before, were worthless. There was another press in Baltimore which would suit his plans better.

Q. That was at a Hearst plant?

A. That was at a Hearst plant.

Q. Who located it?

A. I did.

Q. And prior to the time that you located that press at Hearst, Koessler never bought a press from Hearst?

A. I'm not so sure he didn't.

Q. You heard him testify in court?

A. I don't know whether he did or not.

Q. The fact remains, were it not for the fact you brought

this to the attention of Koessler, he would not have
2601 known about it?

A. The press was for sale.

Mr. MOORE: I object to the form of the question and on the grounds it is argumentative. If you want to argue, argue with me. Ask the witness questions. I object to the form of it.

The COURT: Let's have the last question.

(Thereupon reporter read the last question.)

The WITNESS: He certainly would have found out about it.

The COURT: I will sustain the objection. The question is a fact question, pursue it that way, please. Look, again I want to ask you, as far as Mr. Gorman is concerned, now has the hue changed?

Mr. BERNSTEIN: It hasn't changed, and the Government will make the statement that it will not consider——

The COURT: Mr. Gorman is sitting there doing certain things, pursuing certain actions, and writing certain
2602 letters. He is not part of any plot, right?

Mr. BERNSTEIN: Correct.

The COURT: He knows what he did or didn't do.

Mr. BERNSTEIN: Very well.

The COURT: When I say "part of a plot", I don't mean to cast the inference there was one. You think there was. At least this gentleman was no part of it in your concept of things?

Mr. BERNSTEIN: That is correct. If I may make a statement for about thirty seconds, I think it would be helpful to the Court to ascertain the Government's position. The Government has charged (a) that Greater Buffalo's acquisition of the stock of International, that act, in and of itself, is a violation of Section 7 of the Clayton Act. Section 7 prohibits any corporation from acquiring the stock or assets of another corporation engaged in interstate commerce if the effect may be substantially to lessen competition in any line of commerce in
2603 any section of the country. So it is the Government's contention that when Greater Buffalo purchased the stock of International they eliminated competition between Greater Buffalo as a printer and International as a printer. The Government also contends that the relief sought in this case is divestiture not only of what Greater Buffalo acquired illegally, divestiture of everything that it obtained as the fruits of the violation of that law, which includes the Sylacauga plant, because under the Government's contention the Syl-

cauga plant was something that had been developed by Gorman with King initially, and when Greater Buffalo came in they changed certain details and provided certain things, but nonetheless he built on what International—the foundation

International already laid. This is in connection with 2604 the newsprint, in connection with the gift of land, in connection with all of the details, in connection with the press that Mr. Gorman had found in the Hearst organization, International employees set it up. It is for that reason this evidence is relevant. Now, the Government also contends, charges, as a third facet, that Greater Buffalo wouldn't have been in a position to violate Section 7 of the Clayton Act had it not been for the conspiracy in which it was then engaged with its other printing competitor, King Features. King Features, by this deal, whereby Koessler led King to believe that King would be the exclusive selling agent for all printing done by International and done by Greater Buffalo, that King paved the way and assisted in this transaction. The Government also charges that NEA, knowing all of these things, knowing—that is overstating it—NEA knowing——

Mr. STEVENS: Thank you.

2605 Mr. BERNSTEIN: NEA, knowing certain things—I don't want to elaborate at this point—also found itself in the same position——

The COURT: What same position?

Mr. BERNSTEIN: As King. King had to make a decision, it either had to give International more money or finance a southern plant or do something to operate antiquated equipment——

The COURT: Do you mean that your concept is that NEA sold out that old printing thing that Koessler said wasn't worth repairing, that couldn't possibly compete with Koessler, that that was forced upon them?

Mr. BERNSTEIN: No. I say that NEA had to make the decision. It couldn't use that old, crappy plant any more. It either had to find another color printer who would be in competition with Greater Buffalo, or have to build another plant of its own, or would have to do, as it did, it went over to its competi- 2606 or, Greater Buffalo, and said, "Look, I'll turn over to you all the accounts that I have, you print for them, you give me a kickback on them"—we will call it a sales commission and use nice language—"You give me some revenue and we

won't compete for those customers and we won't compete for any new business that are Scripps-Howard accounts, and we'll decide which newspaper business Greater Buffalo gets and which business NEA will get, because I know that you have this kind of an arrangement with King, whereby King is the exclusive sales agent for International, and I want to be in a position to get the same price from you as King, and therefore I want to team up with you." That is the Government's contention, with one more item. Both King and NEA had the power to, and used the power to, tie in the sale of the printing with the sale of the features. That is another aspect that
2607 has to be taken into consideration.

The COURT: Now, wait a minute. That would mean that some newspaperman has to come in here and say, "I was dead unless I agreed to take what they had to sell."

Mr. BERNSTEIN: Some newspaperman could say——

The COURT: That hasn't been done.

Mr. BERNSTEIN: No. We are offering evidence of tie-ins tomorrow or Friday. We will get the evidence in the record. I can't do it all at one time.

The COURT: I thought we were going to close out this case with NEA, finish with Mr. Gorman and I thought you were going to the NEA thing and that was the end?

Mr. BERNSTEIN: That will be the end.

The COURT: What about the newspaperman?

Mr. BERNSTEIN: We will prove through NEA documents and NEA's witnesses the statements I make to the Court.

The COURT: I would like to have some newspaperman come here, if he would, and say, 'I was ground down, period,
2608 flattened out.'

Mr. BERNSTEIN: We wouldn't be able to do that by Friday.

The COURT: You make these assertions, Mr. Bernstein, and I am sure you are genuine. But these are more exciting assertions than trying to give one meaning to old letters, where I have found that, apparently, according to the newspaper people, there is another interpretation. You may say that is wrong, the way they interpret it. There is a lingo in this game that I don't know about.

Mr. BERNSTEIN: The problem is this, your Honor. When we get a factually complicated case—the case isn't complicated, the facts are complicated because it involves those four facets

I explained to you, it involves lots of details, and right at the moment in my examination of this witness I am going into that phase of the case which indicates that Greater Buffalo used the assets of International to open Sylacauga and, therefore, relief should be applied in that direction. Now, if your Honor will bear with me, I appreciate——

The COURT: Let me ask you a practical question. The Sunday paper, the Courier, is now a quarter. Some time ago it was fifteen cents, let's say ten years ago. I suppose when I was a kid it was a nickel. Do you claim this business has caused that paper to be more expensive today?

Mr. BERNSTEIN: Not directly, indirectly. Any time costs are increased, any time an item of cost is increased through the elimination of competition, I do claim that some part of that is reflected in the additional price.

The COURT: They must be going through an awful mess of eliminating competition in this country because prices and costs are going like made, this inflationary thing has spiraled. Do you think that is because competition is being eliminated?

Mr. BERNSTEIN: Your Honor——

The COURT: It is cost of labor, mostly.

Mr. BERNSTEIN: High prices aren't always the result of the elimination of competition.

The COURT: In this instance you are going to definitely show that the public is suffering?

Mr. BERNSTEIN: I represent to the Court that before Friday I will produce documents in this case which will show that International raised its prices to newspapers, raised its prices to King, solely because Greater Buffalo was in the picture and it didn't have that competition from Greater Buffalo. Through documents it will be done by Friday.

The COURT: I think we ought to have a recess and take lunch. Let's convene at two o'clock.

(Thereupon the Court was in recess at 12:30 P.M.)

2611 (Proceedings resumed, pursuant to recess, commencing at 2:00 P.M.)

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

Mr. MOORE: If your Honor please, I do not conceive that this is the occasion to make the legal argument called for or the denials called for by Mr. Bernstein's exposition to you. We would

state, however, that he speaks outside of the record he has made. He speaks in a framework of supposed facts which haven't been proved, which will not be proved, either in this forum or any other forum, and the confusion that adheres in this case, and this has been true for the past seven years, the day this case started, has been in the entirely inconsistent position that the

Government has taken as to (1) what the content of the 2612 charge they make is—this has changed constantly throughout the case—(2) what the relief they are seeking is.

A very good example is the complaint itself, in its prayer for relief, praying great divestiture of all these properties, says one thing can't be done, they cannot be divested to King, and yet we find counsel now suggesting just such a remedy. I say that is just indicative of a source of this confusion. Let me just direct my attention to replying to his remarks about Sylacauga, because that, I take it, is what the subject matter of the present cross-examination is about. The facts about Sylacauga are simple, they have been developed before this Court before at great length. Unfortunately, Mr. Bernstein wasn't here. I assume that he has had the benefit of reading that record. Your

Honor read it and made findings on it. The fact was that, 2613 as has been developed, and I speak wholly in the record right here, International was planning and would liked

to have built a plant in Sylacauga. They didn't have the means to do it, and without the money, without the resources, without the credit, no plant could be built. That situation prevailed with all of their plans up to the time International was sold to Greater Buffalo, the stock was sold. And it is crystal clear in the record, undisputed by the Government unless they want to dispute their own exhibits, at the time of the sale there was no binding commitment upon the part of International to make the building plans, and there couldn't be, they didn't have the means to do it. Now, they say this is a fruit of what they call a conspiracy, although the nature of this agreement is certainly

confused, to say the least. What they charge is conspir-

2614 acy. The fruit of what? The fact is Sylacauga, the town and the news mill was up for grabs for anybody who

would put a plant down there. They talked to Koessler before they talked to Gorman, years before. International has done some spade work there, but Greater Buffalo got nothing from International out of Sylacauga. It was their own money that built the plant, it was the press they designed and they alone

knew how to design that was set up there. It was their own building plan, everything about it was Greater Buffalo's. If that is a fruit of the conspiracy, I must say this is one of the strangest inferences I ever heard argued in a court of law. Now, that is the story on Sylacauga, and those facts have been developed here fully, yet counsel persists in going through them again and again and again. But that is the state of the record and
 2615 the state the record will remain in. The fact is the Government's theory, current theory, as I understand it, as to Sylacauga is not borne out by this record any more than it was by the record that had been made before your Honor on previous occasions. One other matter and I will subside. Counsel, I think excitedly, said to your Honor he was going to prove things were going on today. I had assumed he closed his case but evidently he is going to reopen it, and he was going to show that these pressures were on, these tie-ins were on, everything was going on today, there were evils going on today, he was going to develop it. We pointed out to him that he was the one who recommended to this Court the entry of a consent decree against Hearst, terminating, as the Government represented, as they would have to represent, what they claim was an evil.

Now, do I understand him to say that his consent
 2616 decree did not, in fact, terminate that evil? I am puzzled, and I will remain puzzled on that score, I fear. But the fact is that this witness has been on the stand under cross-examination approximately six times as long as he was on direct examination. On one occasion Mr. Bernstein said he had fifteen minutes, that was two weeks ago. A couple of hours ago he said he had twenty-five minutes, fifteen more minutes. It seems to me that he should proceed to adduce his proof and not stop for these explanations and statements wholly unsustained by the record, which necessarily call upon us to rebut them.

The COURT: I have more or less invited that, because it was a long, drawnout thing, and I must read the record, and once in a while I have asked the Government and you to put things on focus now. So I can't argue that it is not welcome, I
 2617 frankly asked for it, because, you see, I have a tremendous record here, and I shall hear final arguments, I assume, but basically I will have to think about these things as they progress through the trial.

Mr. STEVENS: If your Honor please, today has been refreshing from NEA's point of view because at least we were men-

tioned, we have found some reason for our being here, having made many trips. As your Honor commented, when I suggested I would have a few questions for Walter Koessler on cross-examination, that you hadn't realized NEA had been mentioned, and today, at least, I have had that refreshing distinction.

The COURT: You are like the man in the back of the court room in a criminal case, the further you keep edging away from the principal defendant—

Mr. STEVENS: Yes, we would like very much to do that, and we feel that not only can we properly get away, by no
 2618 means has the Government drawn us in. I was pleased this morning that Mr. Bernstein thought it proper to correct himself when he said NEA knew this, and he amended, just as he is going to have to continue to amend until the nth day of this litigation his statement, his statement to say certain things occurred from which NEA ought to have known of the existence of the conspiracy. I don't want to go into a lengthy argument upon the sufficiency of the case under Sections 1 and 2 of the Sherman Act, I think there is another time for that. I do want to say that if Mr. Moore, as he properly does, finds the greatest difficulty in supporting any claim of a conspiracy between Greater Buffalo and King Features or Hearst, that is true as far as NEA is concerned, because we say there is neither
 2619 an underlying conspiracy nor anything at all to connect NEA with that conspiracy. I was relieved today to hear Mr. Bernstein say with some fervor or excitement that NEA joined this conspiracy and shook down Greater Buffalo. Now, I anticipated exactly that contention, knowing how fallacious it was, because your Honor will recall that in the few questions that I did direct to Mr. Koessler I concluded with the question on exactly that point, and I don't know how the terminology "shakedown" could even conceivably be applied to NEA in the face of the answer which I received to substantially this question—it was my last inquiry of Mr. Koessler—"No matter how often King Features tried to shake down or shook down Greater Buffalo, as in Waterloo, Iowa, and other places, there is no doubt that NEA never did that, is there?"
 2620 and his answer was no. Now, if that is the basis upon which we are supposed to have entered the conspiracy, certainly there is a direct denial of the hard core of the

Government's charges against NEA. As I say, I don't think this is the appropriate time to argue at length the sufficiency of their case, but I don't want to let it go by without calling to your Honor's attention the fact that the very statement Mr. Bernstein made was anticipated in my inquiry directed to Mr. Koessler, and Mr. Koessler denied the existence of any shakedown.

The COURT: All right. Pursue the witness.

Mr. BERNSTEIN: Yes, your Honor.

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Gorman, let's see if we can summarize some of the details of what International Color Printing did with respect to the establishment of the printing plant which later was opened in Sylacauga, Alabama, and which printed under Dixie Color Printing. Is it a fair summary to say—I don't know whether you testified to this or not, it may be repetitious—is it a fair summary to say International sent six employees to Sylacauga to remain for about a year to set up the printing Press 2022 which was used in Sylacauga?

A. Yes.

Q. Is it a fair summary to say that Joe Clinton, who was an International employee was in charge of setting up the plant at Sylacauga under the guidance of Walter Koessler, through you?

A. What period are you talking about?

Q. At some period it was, is that correct?

A. He was working for International Printing Company, knowing eventually he was going down south.

Q. And while he was working for International he was under your direct supervision?

A. Yes, he was doing that on the side as a convenience for our parent company, he continued to do his own work.

Q. And that included visiting Sylacauga, Alabama, for extensive periods of time.

A. Never an extensive period, a day or two at a time.

Q. And that included visits to Buffalo?

The COURT: Has he retired?

The WITNESS: No, no.

The COURT: I thought you said until he—what was the last comment?

2622 (Thereupon the last answer was read by reporter.)

The COURT: I thought you said he retired.

The WITNESS: No, no.

By Mr. BERNSTEIN:

Q. He is in charge of the Sylacauga plant right now, is that correct?

A. I believe so, yes.

Q. And you don't know this?

A. I have no right to speak about who is in charge of the Sylacauga plant, I have nothing to do with it.

Q. Now, during the time that he was an International employee, while he was still at Wilkes-Barre, he did spend some time in going over to Greater Buffalo's plant in Buffalo and—

A. I doubt if he was there more than once.

Q. Is it fair to say that International purchased a great deal of equipment for the Sylacauga plant and was later reimbursed by Greater Buffalo for that?

A. Around 1960, yes. 1959-1960, yes.

Q. As far as the outsiders that International was dealing with, they didn't know that the plant was for Greater
2623 Buffalo, they thought it was for International?

A. They didn't know. As Joe Clinton himself testified, the people in Sylacauga thought he owned it.

Q. And International paid approximately \$32,500 for the 2022 press that was later installed in Sylacauga, is that correct?

A. That is right.

Q. And then spent about \$100,000 to repair that and was later reimbursed by Greater Buffalo?

A. We were reimbursed immediately, and we were repaid immediately, as we made the payments. It was a matter of convenience for our parent company. It was not anything that was ever intended for—never any thought that International Color Printing would run that plant and build it after Greater Buffalo bought International.

Q. Well, earlier we read—the record will show that earlier we read documents where you wrote to the Chamber of Commerce and the Development Commission, saying International was going to run it?

A. Sure, I was working for Greater Buffalo Press.

Q. You wanted the people in Sylacauga to believe——

A. They didn't, they knew all about it.

Q. They knew?

A. After 1955, yes, they knew.

2624 Q. They knew title was taken in Greater Buffalo?

A. They knew it, they knew it.

Q. But Greater Buffalo was to lease the plant to International and International was to operate the color printing plant?

A. No.

Q. That's what the memorandum—that is what your letter says.

A. All right, I didn't know what I was talking about.

Q. You didn't know what you were talking about?

A. No.

Q. You say now, under oath——

A. If I said that I didn't know what I was talking about.

Q. Now you say under oath that the fact was otherwise?

A. The fact was always that Greater Buffalo would run the plant.

Q. When Sylacauga opened King transferred about six million runs, six million 4's from Wilkes-Barre to the Sylacauga plant, is that correct?

A. Six, seven, I don't know.

Q. What is your best recollection?

A. I don't know.

Q. Well, there has been testimony—the answers to the interrogatories will show the exact amount that was transferred there, and I represent it shows about six million 4's.

A. Well, whatever it was, there was a tremendous saving to the newspapers in the south.

Q. Was this transfer upon Greater Buffalo's instructions?

The COURT: Let me hear that again?

The WITNESS: It was a tremendous saving to the newspapers in the south.

The COURT: You mean cost?

The WITNESS: In cost, in transportation.

By Mr. BERNSTEIN:

Q. Saving in this extent——

A. In other words, the ultimate consumer reaped great benefit, and for a time we ran slack because we transferred six mil-

lion to the south—King Features did—then Greater Buffalo filled us up again.

Q. What I am trying to understand——

A. At the same time Southern Color was growing to capacity.

Q. You don't know that of your own knowledge?

A. I do.

Q. How do you know?

A. Because whenever we lost a run, King lost a run, I checked with the newspapers, I found out and I went to Southern Color and I asked them myself.

2626 Q. Did Southern Color—did International lose that run to Southern Color because Southern Color quoted a lower price?

A. It lost it for two reasons. There was a reason for each loss. There was our transportation; as for price, I know nothing, I'm not familiar with price. And this may not appear important to you, but it is a tangible, Jack Hornady's southern charm. He was born in the south, he has lived in the north forty years, he contends to be a southerner. He has friends on the newspapers who for personal friendship give him the business.

Q. As far as the runs that were transferred from Wilkes-Barre to Sylacauga, that was done on Greater Buffalo's instructions, is that correct?

A. What is that?

Q. The runs that were transferred from Wilkes-Barre to Sylacauga, you did that——

A. Yes, of course, I didn't have authority.

Q. On Greater Buffalo's instructions?

A. Yes.

The COURT: Excuse me. You are a technician and a printer, basically. Do you know the Southern Color Print facilities?

The WITNESS: Yes, sir.

2627 The COURT: Could they compete in any sense, turn out a product comparable to what you——

The WITNESS: They are not equipped to do quite a number of jobs which we are. Take 10-page sections, for instance. Hornady represents Southern Color, and he took the Raleigh News and Observer from King, a 10-page section. Southern Color wasn't able to do it. Hornady pulled it up in Wilmington, Delaware, at another plant. He really represents two plants. Now, they don't have preregistry, they can't register third

pages, they can't register half pages, they can't register quarter pages, and that is not because we have a monopoly, it is because Walter Koessler had the know-how. I had more than they did. Back in 1946 I went into Newport News myself and advised them how to get started. We were not trying to keep them out of business. I have a flock of mail between me and
 2628 Commander Bottom, an interchange of correspondence, where I was helping them get started. As late as—after Commander Bottom died, I did the same with Bob Smith who was on the stand here.

By Mr. BERNSTEIN:

Q. Do you have any idea about how many runs, how many fours International lost to Southern Color?

A. I would say since 1950 we lost approximately three million 4's, and since 1956 we lost the difference between approximately six hundred—or about two million—

The COURT: Why?

The WITNESS: Jack Hornady sold these newspapers on the idea of having their work done down there, they saved on transportation. Norfolk, Richmond, Raleigh, Ashville, Winston-Salem, in that area. Hornady is a professional southerner.

By Mr. BERNSTEIN:

Q. Those runs he lost were near—

2629 A. In that area.

Q. Right in that vicinity?

A. Yes.

Q. Do you have an estimate about how much is the maximum that Southern Color prints, how many fours?

A. I think they are printing about 3,400,000 fours.

Q. That is about the most?

A. That is what they are doing.

Q. Now?

A. Yes.

Q. Six million is what was transferred from Wilkes-Barre to Sylacauga?

A. What has that got to do with it?

Q. We are showing the comparison between the volume of Southern Color, that you indicate as making such a tremendous—

A. I can't help if they built only two presses, that is their capacity, that is up to them.

Q. And they don't have the same flexibility that Wilkes-Barre has?

A. No.

Q. Nowhere near it?

A. They have maybe close to what we have; not nearly as much as Buffalo has.

Q. Do you believe——

2630 A. Mr. Smith told me they are doing all right.

Mr. RAICHLE: Who is Mr. Smith?

The WITNESS: The manager.

Mr. BERNSTEIN: Do you have any other questions, Mr. Raichle?

The COURT: Look, let's move along.

By Mr. BERNSTEIN:

Q. Do you recall representations made to this Court during the motion to modify the injunction to open up the Sylacauga plant, as to how many fours was necessary before you could open Sylacauga properly?

A. No, I don't.

Q. Do you recall whether it was six million?

A. No.

Q. You don't recall?

A. No. I'm sorry, no.

Mr. BERNSTEIN: Will defense counsel stipulate as to the representations made to the Court?

Mr. MOORE: We will stipulate, if you will put in the proceedings. Whatever we did, we did. You don't seem to want to put in the proceedings, you don't want part of them, 2631 you say.

Mr. BERNSTEIN: I have no objection, if it will simplify things, to move along. I have no objection to permit either side to draw on those portions of the proceedings that have been in evidence, that it wishes to draw on. I think that is the fairest way, so that the Government does not adopt anything that the defendants offer in evidence, the defendants do not adopt anything the Government offers. That will simplify a lot of things.

The COURT: That was on the special proceedings, it was all pointed to the special proceedings, the application for the injunction?

Mr. BERNSTEIN: That is correct.

The COURT: Do you want to put it in here now for the Court's consideration, all the way, as proof in this case, which is squarely in issue?

Mr. BERNSTEIN: The Government—the answer is no.

The COURT: Then nobody gives anything.

2632 By Mr. BERNSTEIN:

Q. Are you still an officer of Dixie Color?

A. I don't think I was ever an officer of Dixie Color. I don't think I was.

Q. Well——

A. I may have been. If I was, it was very briefly.

Q. I will show you some documents, we will get into that. I am trying to get your own recollection now. What do you recall were the events that led up to the termination of International's participation in preparing the plant at Sylacauga, and so forth, and the operation of the plant by some other corporation? Did you have any discussion about it?

Mr. MOORE: I object to the form of the question in that it calls for a conclusion.

Mr. BERNSTEIN: I will withdraw the question. I offer in evidence line 23 from page 121 of the hearing on October 25, 1961, which was the proceedings to modify the preliminary injunction, in which Mr. Joe Clinton testified under oath that it would require a minimum production of seven and one-half million

fours to operate the Sylacauga plant at a profit.

2633 Mr. MOORE: Are you offering that in connection with this? Can you finish this witness and then put your proof in?

Mr. BERNSTEIN: Yes, I offer that statement. May that be received in evidence?

The COURT: All right.

By Mr. BERNSTEIN:

Q. I ask you, Mr. Gorman, do you agree with that statement?

A. I don't know what Joe Clinton's thoughts were on the subject at all. I wouldn't attempt to answer that.

Q. Now, P-126 for identification is a certificate of incorporation of Dixie Color Printing Company, and I invite your attention, Mr. Gorman, to the fact that the incorporators were yourself, Mr. John Walter Koessler, Mr. Kenneth L. Koessler, Mr. William J. Hammond and Mr. Joseph T. Clinton, and I

invite your attention to the last page which shows the date of April 18, 1957. I offer P-126 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. RAICHLE: No objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-126, previously marked for identification was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-127 for identification, Mr. Gorman, is a document that was submitted by Greater Buffalo. Do you recognize the handwriting on that document?

A. I think it is Bill Hammond's.

Q. It shows the officers and directors—it was prepared August 3, 1960, and it shows that the officers and directors of Dixie Color Printing Corporation—

A. Wait a minute, you say it was prepared August 3, 1960?

Q. Isn't there a date on the upper right hand corner, 8-3-60?

A. You mean this paper was prepared?

Q. Yes.

A. That date is on there, yes.

Q. It shows that the officers and directors of Dixie Color Printing, from April 18, 1957 to—what is that date in 1960—August 3, 1960, were Joseph Gorman, President and Director; John W. Koessler, Vice-President and Director; Kenneth L. Koessler, Secretary and Director, Joseph T. Clinton, Assistant Secretary and Director; William J. Hammond, Treasurer and Director. Does that refresh your recollection?

A. No, if I was a director or president, I have no recollection of it at all, whatsoever.

Q. You have no recollection of doing anything?

A. No.

Mr. BERNSTEIN: I offer P-127 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-127, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-119 in evidence is a letter dated July 2, 1957, from Mr. Gorman to Mr. Koessler, in which you, Mr. Gorman, report—is this a fair summary of the letter, without reading all of it,

that you bring Mr. Koessler up to date on what you have been doing on Press 2022 for the Sylacauga plant? Is that what the purpose of the letter is?

A. We were advising them we were carrying out his instructions as to rebuilding Press 2022 according to his plans and specifications.

Q. P-128 for identification, Mr. Gorman, is another letter that you wrote to Mr. Koessler on behalf of International Color Printing Company, dated February 5, 1960?

A. Yes.

Q. And in the second paragraph you say: "We expect to complete our Press 2392 between February 15th and March 1st. We would then be able to go ahead with 2022." Is 2392 a press you were completing at Wilkes-Barre?

A. Yes.

Q. And 2022 was to be worked on for Sylacauga?

A. In truth we did nothing on 2022 for about three years.

Q. Does P-128 relate in some detail the things that International was doing with respect to that press, to prepare it for installation at the Sylacauga plant?

A. Yes, entirely under the instructions of Walter Koessler.

Q. The last paragraph—next to last paragraph you say: "As things stand now we think that Joe Clinton should go to Sylacauga about the second week in March. He would be able to line up a lot of material which needs to be purchased locally and arrange for some of the work which must be done such as motor pit, ink tanks, racks, etcetera. As things stand now, we figure that Joe would leave about March 15th, and stay in Sylacauga three or four weeks and return to Wilkes-Barre about April 1st, and stay maybe for the month of April."

Does that refresh your recollection that Clinton did—

2637 A. As to what?

Q. Does that refresh your recollection that Clinton, while he was an employee of International, did go down to Sylacauga to install the plant, and it wasn't exactly as you said before, that the only time he went there was about a week before it opened?

A. I didn't say that. I said he went there at various times for a small period of time, and I consider a month a small period of time.

Q. "In the meantime he will get in touch with Buffalo to coordinate the material in the works, shipment of first items, et cetera, and then he would count on returning to Sylacauga again early in May for a few weeks. He wanted to have my approval of his thinking and I have given it, and I think he will go down and we will pursue along the lines laid out above unless we hear further from you." I offer P-128 in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: We have no objection. I would point out that the relevancy of it seems far-fetched to me. This is a subsidiary corporation. I suppose Greater Buffalo could direct its subsidiary to do a lot of things.

The COURT: What about that?

2638 Mr. BERNSTEIN: The point is that this is a continuation of what had started—

The COURT: Of your claim, I'll receive it, overruled.

(Thereupon Plaintiff's Exhibit P-128, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-129 for identification is a letter from Eugene Muller to J. J. Gorman, International Color Printing Company, concerning the understanding for the purchase by International of the Press 2022 and the price, \$32,500. It is offered in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-129, previously marked for identification, was received and marked in evidence.)

The COURT: That is the old press which was at—

The WITNESS: Rebuilt.

2699 The COURT: At Wilkes-Barre?

The WITNESS: We bought it in Baltimore. It was sent to—

The COURT: That is right.

By Mr. BERNSTEIN:

Q. P-130 for identification, Mr. Gorman, is that a memo to you dated September 10, 1958, from Mr. Tom Brennan on the subject of stereotype equipment for Sylacauga, Alabama?

A. I don't think it has anything to do with Sylacauga.

Q. What is the subject in that letter?

A. It's about—oh—three pages about a lot of detail about machinery. Do you want me to read all that?

Q. Either you are going to take the time or I am.

A. All right. Take paragraph by paragraph.

Q. Is the subject matter of that document stereotype equipment for Sylacauga?

A. That is right.

Q. And who is Tom Brennan?

A. He is a purchasing agent for us.

Q. For International?

A. Yes.

Q. And is Mr. Brennan reporting to you about a meeting that he had in Buffalo concerning equipment that could
2640 be sent from Buffalo—equipment that could be sent from Wilkes-Barre to the Sylacauga plant and equipment that could be purchased in Sylacauga for the plant?

A. The first paragraph is about web detectors. I don't know whether he was talking about sending them to Wilkes-Barre or Sylacauga.

Q. Stereotype equipment for Sylacauga?

A. I am talking about the first paragraph.

Q. The subject of the memorandum is—

Mr. RAICHLE: The letter speaks for itself.

Mr. BERNSTEIN: I offer the letter in evidence, your Honor.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-130, previously marked for identification, was received and marked in evidence.)

The COURT: There is one thing I have in mind, Mr. Gorman, there is some jargon in the printing game—

The WITNESS: Just as there is in gardening and law.

The COURT: Right. If you think there is a purpose in enlarging on the jargon, I would like to hear it.

2641 Mr. BERNSTEIN: P-131 for identification is a memorandum to Mr. Gorman. I offer it in evidence.

Mr. RAICHLE: By whom?

Mr. STEVENS: Objection for NEA.

The WITNESS: Speaking of jargon, your Honor, when you speak of a tired family in Wilkes-Barre, and a limping old press, don't ever refer to me as a limping old president.

Mr. BERNSTEIN: I offer P-131 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-131, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: This is stuff we have gone all over in the other hearing. It is all stuff that was gone over before in the other hearing, about the press and the——

Mr. BERNSTEIN: That is the end of the Government's record with respect to this matter.

2642 Mr. RAICHLE: You are through?

Mr. BERNSTEIN: On this subject, yes. I offer P-132 in evidence.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-132, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: I have only one or two questions.

Mr. BERNSTEIN: I am not through with this witness. I am through—this takes the place of those two volumes on the hearings for the modification of the injunction.

The COURT: The thing I am concerned about—do you remember the last time, you talked about fifteen minutes, a half hour, an hour, and then I said finally, "Can we get finished?" and you said no? Now, we started at ten, we didn't work too long, true, but I am pretty well beat from my morning efforts.

We are going now since two o'clock and it is quarter
2643 to three. I don't understand it, what is new, what is surprising to you?

Mr. BERNSTEIN: Surprising to me is the denials of the witness and the long details I thought I could summarize without reading the memorandums, that I would get forthright, cooperative and frank answers.

The COURT: I thought you did. I don't think he has been evasive. He said no or yes. Once in a while he wants to talk a bit. I don't think there is any estimate of time.

Mr. BERNSTEIN: My estimate was based on the fact it could go—apparently I'm a poor estimator.

The COURT: Look, you have got three days. I don't understand it. Do you remember the last time before we adjourned, finally in desperation we started to talk about fifteen minutes, a half hour, and finally it was obvious we could not finish the testimony of this gentleman. Now we are here again, at
2644 it all day.

Mr. BERNSTEIN: Your Honor, please—

The COURT: This man, you claim, is a cog in the wheel, innocent all the way?

Mr. BERNSTEIN: A very important cog, your Honor.

The COURT: All right.

Mr. RAICHLE: What are you going to talk about?

Mr. BERNSTEIN: I am going to talk about the fact that the sale to Greater Buffalo of International was all one package deal and——

The COURT: You said this man was no party to it?

Mr. BERNSTEIN: He is a witness to certain events.

The COURT: He signed certain letters and he made certain transactions. I still feel that you are zealous about him. You think he is something in the thing.

Mr. BERNSTEIN: I think he has information that is relevant to an understanding of what Mr. Koessler has said wasn't so.

The COURT: Am I right? The last time we were around you thought you could finish this man in fifteen minutes?

Mr. BERNSTEIN: That is correct.

The COURT: Now, what has changed since then?

2645 Mr. BERNSTEIN: At that time I intended to just offer the documents in evidence and argue it at a later date. Now it appears, in order for the Court to comprehend this matter as it goes along, I have changed the method of presenting the case.

The COURT: I asked you once in a while to summarize the letters, the comments, so I can look at those among the many other things I have concerning me. I don't want you to spell it out in big letters like a primer in first grade, after all I wasn't born yesterday.

Mr. BERNSTEIN: I will try my best to move along rapidly, your Honor. I hesitate to make any——

The COURT: Go ahead.

By Mr. BERNSTEIN:

Q. Mr. Gorman, isn't it a fact that during the course of your negotiations with King, prior to Greater Buffalo's purchase of International, while you were negotiating with Walter Koessler, Walter Koessler told you that the general arrangement
2646 ments that International had with King would be continued if he acquired the stock of International?

A. Yes.

Q. Isn't it true that you told King you were negotiating with Greater Buffalo?

A. I told Frank Nicht, yes.

Q. And isn't it true——

The COURT: Aren't you going to read a letter and offer it?

Mr. BERNSTEIN: No, I have saved twenty-five minutes reading from his testimony in the Grand Jury because he has stated what he told in the Grand Jury under oath.

By Mr. BERNSTEIN:

Q. Isn't it the truth that you knew that Nicht and Koessler were having discussions for an arrangement with Greater Buffalo similar to the arrangement that King had with International, that is, Greater Buffalo was to be the exclusive printer for King?

A. Nicht told me that he wanted to be an exclusive sales agent for Greater Buffalo.

Q. Did Koessler tell you the same thing?

2647 A. Koessler—

Mr. RAICHLE: Mr. Koessler testified to the same thing here.

Mr. BERNSTEIN: Excuse me, this is a pretty sensitive area, I think—

The COURT: I didn't hear your objection.

Mr. RAICHLE: I said that Mr. Koessler testified to the same thing here.

The COURT: I will let him pursue that.

By Mr. BERNSTEIN:

Q. Then Mr. Koessler did—

A. If I remember, Koessler objected to any such arrangement.

Mr. RAICHLE: Sorry.

The COURT: He objected to any such arrangement. Koessler told him he objected to any such arrangement.

The WITNESS: He didn't like it.

By Mr. BERNSTEIN:

Q. That is your present recollection?

A. Yes.

Q. Your present recollection is that you believe that King controlled International lock, stock and barrel, is that
2648 correct?

A. I think that is absolutely true, yes.

Q. Isn't it true you found Nicht meticulous in remembering details and recording details?

Mr. RAICHLE: Objection. One witness cannot characterize another's trustworthiness. This is a back door attempt to get in some memorandum.

The COURT: I am sorry, I didn't hear your question.

Mr. BERNSTEIN: Isn't it true that you found Nicht, over your long dealings with him, to be a person who was meticulous in remembering details and recording details?

The COURT: That is a characterization, sustained. Look, I know he is meticulous. I will accept that he is a meticulous fellow. I can't get over the image, as I sit here, of the great Hearst dynasty and Nicht, and what an uncomfortable life that must have been to have to shape up every day. All right.

2649 By Mr. BERNSTEIN:

Q. At the time of this transaction when Greater Buffalo purchased International's stock, and during your negotiations with King Features, the fact was King Features had never sent you a cancellation notice canceling its existing contract, had it?

A. No, sir.

Q. And that contract was to run until International received six months' notice of cancellation or vice versa?

A. That is right.

Q. And at that time, as you testified this morning, you were negotiating—at that time, I mean up to June of 1955, you were negotiating with Nicht to get the kind of contract that would give International a better price than it had been receiving before, a price that would give dividends to International stockholders and provide enough money to build a plant in Sylacauga and amortize it?

A. That is correct.

Q. And after Greater Buffalo acquired International then you changed the nature of the negotiations, and you were to get, under Mr. Koessler's instructions, you were to get as much as you could, and you wound up with a contract that gave you the same price as you had before?

2650 A. I didn't change the nature of the negotiations. I tried up to the last to get the best I could and it was you who said that I got more when I actually didn't.

Q. What did you get?

A. I got exactly what I had before I started.

Q. It is exactly the same with one difference; you now had a ten-year contract with King rather than a—

A. Which I didn't have—

Q. Which you didn't have before?

A. Before the company was sold.

Q. Before the company was sold——

A. I had six months.

Q. You had six months; you were at King's mercy, and after the company was sold you had the assurance that for ten years King could not do printing anywhere else except over and above 75% of its requirements?

A. That's what the contract said, 75% of its requirements.

Q. Did anything occur——

The COURT: Look, is there anything that is so odious about that?

Mr. BERNSTEIN: This is diametrically opposed to the representations of counsel and the statements made by Mr. 2651 Koessler, that the contract only had four months to go, that International was dying, it had nothing, King's contract was canceled. This testimony shows that International was, whatever its financial condition was——

The COURT: It got new blood, it got a shot, new blood. This man who struggled, instead of being out of a job with his people in the union, now feels he's got a future.

Mr. BERNSTEIN: The Government submits——

The COURT: That is one side of the coin, tell me about the other.

Mr. BERNSTEIN: The other side of the coin is that had Koessler not made this deal with Nicht, King Features, Nicht would have had to do something, put some money in the International plant.

The COURT: They didn't have money.

Mr. BERNSTEIN: Hearst don't have money?

The COURT: The testimony was that he could not get to first base with the money in his own outfit.

Mr. BERNSTEIN: That is correct. If he reached a 2652 point where he was not going to have a printer, he would get the money, he would have to do something or he would have to get out of the printing business.

The COURT: You see, isn't it true, Mr. Bernstein, that throughout this case there are two interpretations? You bear the burden of proving by a fair preponderance your assertions. I want you to tell me when you think you have borne that burden on any one point and we will talk about it later.

Mr. BERNSTEIN: All right, your Honor.

By Mr. BERNSTEIN:

Q. Now, I show you P-133 for identification, Mr. Gorman. That is a letter that you wrote to Mr. Koessler in October of 1959, five years after Greater Buffalo owned it. Isn't it a fact that with the same contract that you had with King as to price, you doubled International's profit by charging King more under this same contract?

A. No, that is not correct.

2653 Q. Well, I will read the letter: "Dear Walter: Prior to four years ago, when King Features asked for a price on a new supplement, we figured the exact number of hours which would be required and the new plates which would be required, et cetera, and then estimated the labor cost. We then figured overhead per thousand including newsprint, ink, twine, wrapping, power, light, oil, grease packing, payroll taxes, vacations, et cetera. We figured on arriving at an operating profit of \$7.00 per hour per single width press on all new business. Since four years ago we have gradually been increasing the desired profit per press hour until we are now at a point where we used \$15.00 instead of \$7.00. In other words we have more than doubled our operating profit on all new business. This plan had to be worked out gradually so as not to run into too much opposition from King. We figured pretty high on our overhead and we also figured pretty high on stereotyping so that right now on all new prices we are asking for considerably more than four years ago." Would you please explain that?

A. You said——

Q. Pardon me, would you please explain——

A. You said this indicated we doubled our profit, which would indicate that we doubled our profit on everything we did for King, which was not true.

2654 Q. On what did you double the profit?

A. Only on new business. We decided that because of higher overhead, higher costs, and so forth, we would charge \$15.00 a press hour instead of \$7.00 on new runs.

Q. Did King know this?

A. I didn't have to tell them that.

Q. Weren't you concealing this from them?

A. I didn't have to conceal it. King didn't have to know. The contract, if you read it, provided that we would figure the cost on new runs. We figured our costs, that is it. We didn't have to tell King how we figured.

Q. That same provision was in the contract prior to 1955, wasn't it?

A. And we did the same thing except we didn't raise it to \$15.00.

Q. You didn't raise it as much prior to 1955 as you did after 1955?

A. No. Walter Koessler had nothing to do with it, that is because I got sick of bowing down and catering to Nicht, I didn't have to do it any more, I raised it to \$15.00.

Q. Is it a fact that had you had the same attitude before 1955 you could have done the same thing?

A. I couldn't.

2655 Q. Why not?

A. Because I am in a strong position, I have new blood.

Q. And King has nowhere else to go?

A. I don't care what King does, that is up to them. I told King they could do one of three things; he could either build his own plant, he could establish a new plant, or he could go somewhere else and get it done, he couldn't have his cake and eat it.

Q. When was this?

A. Prior to 1955.

The COURT: Let me ask you this—

The WITNESS: Even with this I didn't make 1%.

The COURT: Previously you did not figure a fair return for your efforts, and now you got—

The WITNESS: A little help, a new business.

The COURT: Did anybody dictate that rate to you?

The WITNESS: No.

The COURT: I want to be sure—

The WITNESS: No, your Honor. Pardon me. Koessler had no idea how I figured.

Mr. BERNSTEIN: I offer P-133 in evidence.

The COURT: What do you think about this phase, Mr. Bernstein?

2656 Mr. BERNSTEIN: I think it demonstrates the tremendous power that King Features had over International before, that it controlled its operations—

The COURT: All right, he didn't like it. Here, he makes a change and he complains before that he was driven into the ground by King, now he says he is getting a fair return, and he

is the manager, and he says flatly that Koessler had nothing to do with it. Do you dispute that?

Mr. BERNSTEIN: No.

The COURT: Wait a minute. You don't dispute it? Do you think something was going on here then or was this man finally coming up for a breath of air and making a fair return on his efforts?

Mr. BERNSTEIN: That is correct, the man was making a fair return, and he had been unable to make a fair return before because King Features controlled him the way it did, but the legal solution was not the purchase of International by the competitor, Greater Buffalo. That was an illegal solution, much the same as—

The COURT: What would have been the solution, you say a legal solution, what could have been done?

Mr. BERNSTEIN: He could have done just what Mr. Gorman said on the stand. He told Nicht, 'Look, I'm not getting enough, you've got to do one of three things—'

The COURT: Nicht would tell him to go to hell.

Mr. BERNSTEIN: Nicht will tell him to go to hell if he was in an insolvent condition.

The COURT: I don't want to hear any more. I have the impression Nicht had Gorman over the barrel. All right, go ahead.

Mr. BERNSTEIN: The Government concedes that, your Honor, that Nicht had Gorman over the barrel but it was Nicht who would have to go out of the printing business. If he wanted to remain in the printing business he had to provide International with sufficient money to remain solvent. If Nicht drove International into insolvency, Nicht wouldn't have a printer.

2658 The COURT: I will hear you at length, Mr. Bernstein, on the whole argument.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: No objection.

(Thereupon Plaintiff's Exhibit P-133, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

-Q. I offer in evidence P-134 for identification, another report from Mr. Gorman to Mr. Koessler, dated August 23, 1955.

Mr. STEVENS: Objection on behalf of NEA.

Mr. MOORE: What is the date of that?

Mr. BERNSTEIN: August 23, 1955.

(Thereupon Plaintiff's Exhibit P-134, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: As to the financial condition of International, your Honor, I believe we can stipulate with counsel—

The COURT: All I know about that is that they were 2659 in the hole for about \$100,000, that this man testified that between the three heirs—I don't remember if the widow was in it or not—there was a constant—

The WITNESS: She was dead.

The COURT: —there was a constant effort to get a dividend. He said that he fought against it, he knew their cash was perilous, and despite that he did his best to meet that. I think that corporation, when there was a changeover, was in desperate condition.

Mr. BERNSTEIN: I will offer in evidence the income from International Color Printing for the—

The COURT: What is that, a profit and loss sheet?

Mr. BERNSTEIN: Income tax return, I will put the figure in evidence and—

The COURT: For income tax purposes, having been around the course a few times, that is one thing. How about a profit and loss sheet, how about the sheet that Koessler got 2660 to buy the place?

Mr. BERNSTEIN: I don't have that.

The COURT: You know what I am talking about, I repeat that I wasn't born yesterday.

Mr. BERNSTEIN: Can we have the record show that the income reported for income tax purposes in the year 1950, there was a net income reported—this is after depreciation but before Federal income tax—of \$199,569.18.

The COURT: What is that?

Mr. BERNSTEIN: The net income, net operating income after payment of officers' salaries and after the deduction of depreciation but before—

The COURT: What year?

Mr. BERNSTEIN: 1950. \$199,569.18.

Mr. MOORE: Give the tax.

Mr. BERNSTEIN: The amount of the tax was \$78,951.97.

Mr. MOORE: Federal tax?

Mr. BERNSTEIN: That is right.

The COURT: I am not playing policeman, I am not concerned about how much tax they paid.

Mr. BERNSTEIN: The net income reported for income
2661 tax purposes in 1951 was \$222,726.19 and the net
income—

Mr. MOORE: Give the tax.

Mr. BERNSTEIN: Does your Honor want—

The COURT: I am talking about Mamie, what did she get
out of it. How much was the tax?

Mr. BERNSTEIN: \$120,859.28. That tax represents an in-
come tax of \$107,533.00, an excess profit tax of \$13,825.94, and
the salary shown there for compensation for Joseph J. Gorman
as president was—

Mr. MOORE: What difference does the salary make—

Mr. BERNSTEIN: \$39,193.71.

The COURT: This is net, you are talking about net earnings.
Net means after Gorman was paid.

Mr. BERNSTEIN: That is right.

The COURT: You have given me the net. Are you going to
offer the returns?

Mr. BERNSTEIN: No. I can offer them.

Mr. MOORE: I object to all the returns going in. We haven't
seen them.

2662 The COURT: Have a look at them, see if you object.

Mr. BERNSTEIN: We put the figures in, we don't
have to put the tax in unless the Court wishes. The Govern-
ment has no objection.

The COURT: What has Gorman's salary to do with the net
earnings of the corporation?

Mr. BERNSTEIN: It shows that King Features was paying
enough money from its printing revenue to pay significant
officers' salaries, dividends to people who were in another
country, yet after depreciation, and so forth, there was still
a net income upon which a tax was paid, so therefore it was not
insolvent.

The COURT: That is a new area. I am interested in that,
because I have the very definite image that either Joe Gorman
is telling me the fact, that this thing was really dead, that he
was being put upon constantly, he was being driven under-
ground by the demand to declare dividends on or about
2663 the time when somebody came along with a message
that he knew about and said, "We will put you on your
feet." Either Joe Gorman is wrong or he was in distress. I will

listen to all the proof in the case. That is the image I have. We will take a recess and then go back at it again.

(Thereupon the Court was in recess at 3:25 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:40 P.M.)

(Thereupon document was marked Plaintiff's Exhibit P-141 for identification.)

By Mr. BERNSTEIN:

Q. Mr. Gorman, can you identify P-141 for identification, please? Just tell us what the piece of paper is.

A. It is a statement showing the operating profit and working capital, et cetera, from 1950 up to 1959.

2664 Q. For what company?

A. International Color Printing Company.

Mr. BERNSTEIN: I offer P-141 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: Objection on behalf of NEA.

(Thereupon Plaintiff's Exhibit P-141, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. I show you P-61 marked for identification, and ask you if that is not a readyprint survey that you prepared during the normal course of your business prior to 1955?

A. For the year 1955.

Q. Yes. I show you P-63 for identification, and ask you if that is not a letter you prepared, which explains in detail how you prepared that readyprint survey, what your practice was?

A. Yes.

Mr. BERNSTEIN: I offer P-61 and P-63 in evidence.

Mr. MOORE: No objection.

Mr. STEVENS: No objection.

2665 (Thereupon Plaintiff's Exhibits P-61 and P-63, previously marked for identification, were received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence, your Honor, P-62 for identification, and represent P-62 is an exhibit prepared by—offered by defendant Greater Buffalo Press at a prior proceeding in this case, and the Government offers it for the items contained in columns 1, 2, 3, and 4, and does not offer the items contained under column 5, or the comments on the sheet, and does not offer the figures with respect to the defendant Hearst.

The COURT: You offer part of it, why?

Mr. BERNSTEIN: I offer that part——

The COURT: What do you mean you offer——

Mr. RAICHLE: We will offer the rest of it.

Mr. BERNSTEIN: No objection to the rest, as long as it is clear——

The COURT: All right, received.

2666 (Thereupon Plaintiff's Exhibit P-62, previously marked for identification was received and marked in evidence.)

The COURT: Now, Mr. Bernstein, when you get through with that, I want to know from the man in charge, who accounted to the heirs what the real picture is about the financial situation in this corporation. It seems to me that you are offering some promising statements. This is the man that ran the place, as far as I know. Hit him in the head with those statements, "How do you explain that?", rather than go around the course again and again. Do you follow me?

Mr. BERNSTEIN: Not clearly, your Honor.

The COURT: You are putting in a picture of largesse and the wonderful operation of that corporation. Why don't you ask him what about that?

Mr. BERNSTEIN: I was putting in a picture of non-insolvency.

2667 The COURT: The same thing.

Mr. BERNSTEIN: There is a big difference.

The COURT: All right, you do it your way. I am trying to cut through this thing. There must be some reason; either Gorman isn't giving exactly the truth about the distressed nature of this corporation or according to your figures it's going like a house on fire.

Mr. BERNSTEIN: Those figures don't show they are going like a house on fire, those figures show they are holding their head above water, they should do better, the Government concedes that, the Government concedes that King should have put more money in there, should have done all the things Mr. Gorman wanted them to do to permit International to compete with Greater Buffalo.

The COURT: What do you mean, more money?

Mr. BERNSTEIN: New presses, put up the money for the Sylacauga plant.

The COURT: How much more money?

2668 Mr. BERNSTEIN: It didn't take much money. Nicht could have done the same thing Mr. Gorman did with the Sylacauga Chamber of Commerce, getting them to deed the land, using the bank's money down there to put the building up. Nicht could have done that.

Mr. RAICHLE: That is conceded that Nicht had the chance to do it?

Mr. BERNSTEIN: That is correct, Nicht had the chance to do it, had Section 7 of the Clayton Act not been violated.

The COURT: I remember some testimony that Hearst's policy was "We don't want to get in the printing business".

Mr. BERNSTEIN: That is right. We have some memoranda—

The COURT: I remember that out in San Francisco there were excellent presses to turn out this stuff.

Mr. BERNSTEIN: Mr. Gorman's memorandum shows those presses were not so hot, it couldn't be done.

The COURT: Go ahead.

2669 By Mr. BERNSTEIN:

Q. Now, P-135 for identification is a letter from you to Mr. Koessler, and this is dated December 17, 1959, and this is four years after the acquisition, and you say: "Dear Walter: Please let me know if you gave King Features a production increase for Youngstown, Toledo and Erie at the beginning of this year." Now, Greater Buffalo was printing Youngstown, Toledo and Erie, was it not?

A. Yes.

Q. Prior to 1955 Wilkes-Barre had been printing Youngstown, Toledo and Erie?

A. Some time prior to 1955.

Q. King took the runs out of Wilkes-Barre and put them in Greater Buffalo, is that right?

A. That is correct.

Q. And then you say: "I have in mind the possibility that if you did not increase your price to King, Mr. Nicht has an argument, maybe not a very good one, against an increase for us on the work we are doing for King." So that you were trying to conform your prices to King based on the price of Greater Buffalo?

A. Not exactly.

Q. What is that?

A. I was trying to get an increase from King, but if
2670 Buffalo didn't increase the price on those runs which it
took from us, I would have a much more difficult time
getting an increase from King.

Mr. BERNSTEIN: I offer P-135 in evidence.

Mr. RAICHLE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-135, previously marked
for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-136 for identification, Mr. Gorman, is a letter you re-
ceived from Mr. Koessler, president of Greater Buffalo Press,
on February 26, 1960. He says: "Dear Joe: I think it wise for
you not to raise your costs in the cases of Newark, Jamaica,
Houston and Binghamton until we do. We cannot raise the
prices until we get the second press going at Lufkin so that we
can print ten and fourteen pages and give these papers full
service. The Washington and Norfolk matters are matters for
you and Frank Nicht to work out. I can see that there likely
would be a problem at Norfolk." In the first paragraph Mr.
Koessler is talking about Newark, Jamaica, Houston and Bing-
hamton; was he talking about papers that you were
2671 printing for King Features?

A. I don't recall if we were printing Houston at that
time. We were printing Newark, Jamaica and Binghamton.

Q. For King?

A. For King. We were trying to get a production increase
from King, just a straight production increase to take care of
increases in labor rates, and Mr. Nicht asked us to refrain from
increasing Newark, Jamaica and Binghamton.

Q. You say "Mr. Nicht", do you mean Mr. Koessler?

A. Mr. Nicht asked me to refrain.

Q. Mr. Koessler said to you: "I think it wise for you not to
raise your costs—", is that correct?

A. That is what he said, I don't know why. Mr. Nicht didn't
want me to raise them for reasons of his own.

Q. This is a letter to you from Mr. Koessler?

A. That was following word I got from Nicht, asking me
not to raise the prices on Newark, Jamaica and Binghamton,
the same as I was raising them on others.

Q. In the last paragraph he says: "The Washington and Norfolk matters are matters for you and Frank Nicht to work out." What was he referring to?

A. Probably a price increase. I don't know whether we raised them or not.

Mr. BERNSTEIN: I offer P-136 in evidence.

2672 Mr. RAICHLE: No objection.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-136, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. P-137 for identification is a letter, dated July 5, 1956, from Mrs. Betty Voak to you. Who was Betty Voak?

A. I believe she worked for Buffalo at that time. I don't know whether she still does or not.

Q. At that time she wrote this letter in behalf of Greater Buffalo Press?

A. Yes.

Q. She says: "I am enclosing a list in duplicate of all the papers we print, the quantities of the runs and the average number of pages. If I can be of any further assistance, please advise." Attached to the letter is a list of names of the papers, the circulations, and the type of pages, is that correct?

A. I never read the list, I didn't know what it was about then, and I don't know now.

Mr. BERNSTEIN: I offer P-137 in evidence.

Mr. RAICHLE: From who to who?

2673 Mr. BERNSTEIN: From Mr. Koessler's secretary, Betty Voak, the circulation department, to Mr. Gorman.

Mr. STEVENS: Objection for NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-137, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. The final matter, Mr. Gorman; going back to 1959, who in the printing field did you consider International's main competitors?

A. We had no competitors. King Features was—we were a contractor for King Features.

Q. I invite your attention to testimony you gave before the Grand Jury, October 11, 1960, page 959—

The COURT: You mean in light of this last comment, he had no competitors?

Mr. BERNSTEIN: That is correct.

The COURT: He said they had no competitors.

Mr. BERNSTEIN: I want to show a conflict in his 2674 testimony under oath on October 11, 1960.

Mr. RAICHLE: All the facts have been developed. It doesn't matter whether he characterizes them as competitors or not.

Mr. BERNSTEIN: It is important to show that Mr. Gorman regarded them as competitors, who he regarded as competitors.

The COURT: Go ahead.

By Mr. BERNSTEIN:

Q. You were asked this question: "Going back to 1954 who in the printing field did you consider your main competitor?", and what was your answer?

A. I said Greater Buffalo, and I meant production-wise, I knew nothing about the prices Buffalo was charging.

Q. The answer you gave was: "I would say Greater Buffalo Press was our principal competitor." Then on page 960 you were asked this question: "All right. Now, outside of Greater Buffalo Press who were your other competitors?" What was your answer?

A. "The other competitors were Eastern Color Printing Company, Waterbury, Connecticut; Southern Color Printing Company at Newport News, Virginia; World Color Printing Company, Illinois; Acme Printing Company at San 2675 Bernardino, California; and the Buffalo Color Press."

Mr. BERNSTEIN: No further questions, your Honor. I offer in evidence—

Mr. RAICHLE: May I ask this, would you please read the statement at the top of page 961? Let me read it. "Answer: I can't say I was competing exactly because we were doing our work directly for King Features and I don't know whether King Features contacted those papers or not."

Mr. BERNSTEIN: That was a—

Mr. RAICHLE: Just a minute—

Mr. BERNSTEIN: That was an answer in response to other questions on page 960. I will continue reading from line 9.

The COURT: He is a printer. He said, "I don't know if King Features was involved, we are doing our printing."

Mr. BERNSTEIN: But the Government's contention is that he, as a printer, regarded other color printers as his competitors.

He regarded Greater Buffalo as his competitor, he
2676 regarded Buffalo Color Press——

The COURT: He had one customer and he was looking for business.

Mr. BERNSTEIN: That is correct, that is correct, he had one customer. When that customer switched over to another color printer, he felt that he was losing business, he was losing it to a competitor.

The COURT: Wait a minute, has the hue changed now, as far as Gorman is concerned?

Mr. BERNSTEIN: The hue does not change. Ever since I have been in the court room I have heard Mr. Gorman say——

The COURT: Does it change or doesn't it? Is Gorman a journeyman printer, printing to the best of his ability, or is he——

Mr. BERNSTEIN: He is printing only for King before Greater Buffalo bought it.

The COURT: He is now mixed up with Greater Buffalo, do you assign any guilt to him at all?

Mr. BERNSTEIN: Mr. Gorman's only guilt——

The COURT: I say guilt; any skullduggery?

2677 Mr. BERNSTEIN: His only skullduggery is he is very loyal to his employer and tries to present the matter in the most favorable light.

The COURT: He told you what he knows. It is simply this, either Gorman is out of the picture, as far as I am concerned, on knowledge, intent or——

Mr. BERNSTEIN: I take Gorman out of the picture, as far as intent or anything else, as part of this conspiracy.

The COURT: He is a good printer, right? Am I right?

Mr. BERNSTEIN: For the purpose of discussion, I would say, although I've never seen his printing, I will give him a blank check on that, your Honor. I offer P-138 in evidence, which is a composite stipulation of facts that have been in this matter.

Mr. RAICHLE: No objection.

Mr. STEVENS: No objection.

The COURT: You see the point, Mr. Bernstein, there comes a point when you, in your pursuit of the truth with
 2678 respect to this gentleman, cast an image of doubt, whether he is telling the truth.

Mr. BERNSTEIN: I cast an image of doubt, but I want to make it clear that I say this witness is coloring his testimony so that it would be most favorable to his employer. He is telling you the truth, not the whole truth. He is mixing up different events. That is what I charge Mr. Gorman with doing, out of loyalty to his employer and his desire to see that this case is resolved in his favor. When he is confronted with documents and statements that he prepared at the time, he doesn't deny it. He paints with a broad brush, a broad picture, and generalizes, and it doesn't give the Court the exact day by day picture of what was happening, and he was a witness to what was happening. That is his only role in this matter, your Honor.

2679 The COURT: The business rolled in when somebody started to do it by the numbers? Is that true?

Mr. BERNSTEIN: Yes, that is true. That same thing could have been done before had King not been violating the law by engaging in a conspiracy with Koessler.

(Thereupon Plaintiff's Exhibit P-138, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I offer in evidence P-139 for identification, which is a Profit and Loss Statement of the Lufkin Division.

Mr. STEVENS: Objection.

The COURT: Let me ask you this, I might as well be honest. I don't know exactly what preregistry is. Apparently Koessler—this gentleman has been a life-long journeyman printer, it was important. Now, don't you think that is a better mousetrap?

2680 Mr. Bernstein: I think—

The COURT: I don't understand this thing. You claim they gobbled it all up. Now, is it true that they had the best method?

Mr. BERNSTEIN: I concede that.

The COURT: You say they were not willing to share with anyone else. Share the patent? What is preregistry?

Mr. BERNSTEIN: Mr. Feldman's explanation—

The COURT: What about this man?

By Mr. BERNSTEIN:

Q. Mr. Gorman, you knew what preregistry was?

A. I knew what it was but I didn't know how to do it.

Q. Mr. Koessler knows how to do it and do it more efficiently and effective than International knew how to do it?

A. We didn't know how to do it.

Q. Mr. Koessler knows how to do it better than any printing plant in the United States?

A. I would say he is the only one.

The COURT: Isn't that like a patent?

Mr. BERNSTEIN: It's a little different in that——

The COURT: There is no law?

2081 Mr. BERNSTEIN: It is a skill.

The COURT: He knows how to do things?

Mr. BERNSTEIN: He has a skill, he has a skill that is admirable.

The COURT: The only way you can make this case stand is tie-in, if he gives you the way to preregister these things you must tie in something else, and you say that is wrong?

Mr. BERNSTEIN: That is right?

The COURT: Have you proven that to me?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Where did you prove it to me?

Mr. BERNSTEIN: We have proved to you——

The COURT: Where have you proved to me that because Koessler is the only man that has preregistry, that can do it right—Lord knows what it is, I don't know myself, and long ago I learned not to share secrets—he does it right. Now, what is wrong except he tied in his knowledge, you claim, this preregistry, to what, King Features?

Mr. BERNSTEIN: Yes.

2082 The COURT: Where is the proof of that?

Mr. BERNSTEIN: The proof is this——

The COURT: Nicht is dead, King is out——

Mr. BERNSTEIN: No, they are not out, they are able to be brought in. They are subject——

The COURT: They are not here today.

Mr. BERNSTEIN: They are subject to the jurisdiction of this Court.

The COURT: They are not here today. To me it is a big zero. Who is going to prove what you claim, there is a tie-in?

Koessler knows how to do it, King is out, where am I going to get the proof?

Mr. BERNSTEIN: You have it in the record.

The COURT: You are going to tell me about it?

Mr. BERNSTEIN: We will do that.

The COURT: Give me a hint where it is now.

Mr. BERNSTEIN: The hint is this; Greater Buffalo—Koessler, by his better mousetrap, by his skill in having preregistry, had the opportunity to compete against King who had the 2683 features. But instead of that he made a deal with King which said, "I will take——"

The COURT: Now, he made a deal, how? Where is the deal? He made a deal, where is that?

Mr. BERNSTEIN: You have Nicht's deposition in evidence, and Nicht testified in deposition, which is the same effect as if he were on the stand under oath testifying, and his testimony under oath is that he made certain deals with Koessler, and that was that he would take certain runs and Koessler would take other runs. This relationship——

The COURT: Koessler was knocking his head off in printing.

Mr. BERNSTEIN: That is why he made the deal, King made the deal.

The COURT: All right.

(Thereupon Plaintiff's Exhibit P-139, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-140 marked for identification is a 2684 Balance Sheet of Southwest Color Printing Corporation, December 31, 1959. I offer it in evidence.

Mr. STEVENS: Objection for NEA.

(Thereupon Plaintiff's Exhibit P-140, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I have no further questions of this witness.

Mr. RAICHLE: I have one or two, if I might. I hope it is all right with Mr. Stevens. There is a little repetition, and I want to be sure there is no confusion on this subject.

REDIRECT EXAMINATION

By Mr. RAICHLE:

Q. Subsequent to the purchase of the stock of International by Greater Buffalo Press, and during the years that intervened down to date, has Eastern Color Printing Company taken

runs of color comes away from Greater Buffalo and from International?

A. They have taken them from International through 2085 King Features, one very large run.

Q. What is that?

A. Garden City News Daily, which is close to the 500,000 circulation.

Q. And that is since Greater Buffalo has owned International, that account and others have been taken away?

A. Yes.

Mr. BERNSTEIN: Can we have the date on that?

The COURT: Wait a minute, what did you say, Mr. Bernstein?

Mr. BERNSTEIN: I wanted to get the date of that.

Mr. RAICHEL: I'm sorry, I don't know the date.

The WITNESS: Since 1955, I don't remember the date.

The COURT: They have it now?

The WITNESS: They have it now.

The COURT: 500,000?

The WITNESS: Between 400,000 and 500,000.

By Mr. RAICHEL:

Q. Star Color Printing Company in Wilmington, Delaware, they were in business prior to 1955?

A. That is right.

Q. And are they in business today?

A. Yes, sir.

2086 Q. And do they compete with Greater Buffalo?

A. They took from King Features, and thereby from us, the Raleigh News and Observer.

Q. Since the purchase by Greater Buffalo Press of the stock of International Color Printing, Star Color Printing Company of Wilmington has taken runs away from International, right?

A. Formerly printed by us, the Raleigh News and Observer.

Q. The Raleigh News and Observer is the one to which you refer?

A. Yes.

Q. Does Star Color still have that business?

A. Yes, sir.

Q. Southern Color Printing Company, we have been over that, but just to touch it once more, that company was in business prior to 1955?

A. Since 1946 or 1947.

Q. That is the company that Hornaday went with?

A. That is right.

Q. Still in business?

A. Yes, sir.

Q. And that has taken business away from you since Greater Buffalo bought International Color Printing?

A. At least 2,500,000 four-page sections.

2087 Q. That taking away has been the subject of testimony on the hearings apropos of lifting or relaxing the injunction?

A. Yes, sir.

Q. Has King Features taken any business away from Southern Color Printing to compensate for these losses, as far as you know?

A. Not to my knowledge.

Q. Now, was World Color Printing Company of St. Louis in business prior to 1955?

A. Yes, sir.

Q. And is it still in operation?

A. Yes, sir.

Q. Is it a large operation?

A. Very large, very successful.

Q. They print color comic supplements?

A. They print not many color comic supplements, they are fully equipped to do it, but they print a great amount of commercial work, offset work, very profitable.

Q. It is a large operation to which anybody could turn who wanted color comic supplements?

A. They could.

Q. And have them printed there?

A. That is right.

Q. Bridgeport Color Press, was that in business before 1955?

2088 A. That was in business before 1955 and is still in business today.

Q. Is that a source to which anybody could turn to get color comic supplements?

A. Yes, sir. There is one other also.

Q. Which is that?

A. Acme in San Bernardino.

Q. We have made reference to that. Is it still in business?

A. Still in business and have a new plant.

Q. A large operation?

A. A large operation.

Q. That is a source to which newspapers in the area can turn?

A. That is right.

Mr. RAICHEL: That is all.

Mr. STEVENS: If your Honor please, I have just a few questions.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Gorman, in your forty-odd years of dealing with Mr. Nicht you came to know his business attitudes very well, did you not?

A. I think so, yes, sir.

Q. And that included his competitive attitude toward other people who had color comics to license?

A. Yes.

Q. And particularly NEA?

A. I think particularly NEA, yes, sir.

Q. You were in court, were you not, on June 20th or June 30th when I asked Mr. Koessler some questions about Mr. Nicht, do you recall that?

A. I don't remember the questions, I'm sorry.

Q. Do you recall my asking him about Mr. Nicht's wanting to oust NEA from the color comic supplement field?

A. Mr. Nicht—do I recall that? Yes.

Q. Actually, that was a main objective with Mr. Nicht, was it not?

A. I think it was a main objective with all syndicates. He was a compulsive winner.

Q. You mean that he was a fellow that felt he had to win?

A. Yes, sir.

Q. And he played the game to the hilt, did he not?

A. Yes.

Q. Do you recall that Mr. Koessler described Mr. Nicht as implacable in his hostility to competitors?

A. I don't recall exactly those words.

Q. At any rate, that is pretty accurate, isn't it?

A. I don't want to use the word "hostility", he was determined to win.

2690 Q. There wasn't ever a time when he changed that point of view, that you know?

A. No, sir.

Q. In your survey in 1955 of the color comic supplement field, it is fair to say, is it not, that your investigation showed Buffalo Color Press or NEA to be a very small factor?

A. I don't remember the figures. It was quite a small percentage of the total.

Mr. STEVENS: Thank you very much.

The COURT: Any re-cross?

Mr. BERNSTEIN: One or two questions.

RE-CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. According to P-62 in evidence, Buffalo Color Press had 4.6% of the market under column 2, and under the column revised by Greater Buffalo Press, column 4, had 3.8% of the market, is that correct?

A. I don't know anything about that.

Q. That is what—you said you thought——

A. It was a small percentage.

Q. And P-62 in evidence shows it was 3.8%. You testified that Eastern Color took away some business from International?

A. Yes, sir.

2001 Q. And their percentage was 4.2%. And Acme Color took away business from International?

A. I don't know anything about those percentages, I didn't figure them.

Q. How about Southern Color?

A. I don't know.

Q. .6%.

The COURT: Did he make that chart?

The WITNESS: I had nothing to do with it.

Mr. BERNSTEIN: All right. No further questions.

Mr. RAICHLE: That is all, Mr. Gorman.

(Witness excused.)

The COURT: Gentlemen, what is the next order of business?

Mr. MOORE: I think we have concluded our case. We may want to offer just excerpts from depositions, one or two lines.

The COURT: Then you want to go on with NEA, right?

Mr. BERNSTEIN: I think Mr. Stevens——

The COURT: Do you have any surrebuttal in this case?

Mr. BERNSTEIN: No, your Honor.

2692 Mr. STEVENS: When Mr. Moore rests for Greater Buffalo we would like to renew our motion to dismiss the count under Sections 1 and 2 of the Sherman Act, and depending upon your Honor's point of view and disposition, we would then be prepared to go ahead with the testimony of Mr. Anderson.

The COURT: I will probably reserve decision on such a motion.

Mr. STEVENS: I would expect you would.

The COURT: Prepare yourself accordingly. Mr. Anderson is here?

Mr. STEVENS: Yes, he has been in attendance. We will be prepared to go forward with him.

Mr. BERNSTEIN: The Government would propose, if it meets with your Honor's approval, to cross-examine Mr. Anderson and then go into Mr. Anderson as the Government's witness, as far as the tie-ins of NEA is concerned, go right into that phase, unless Mr. Stevens——

The COURT: Except for a bit from Greater Buffalo, 2693 they are about through. You have no rebuttal on their case?

Mr. BERNSTEIN: That is right.

The COURT: We will go on with Mr. Anderson in the morning.

Mr. BERNSTEIN: We have one other witness beyond Mr. Anderson, Mr. Gamble, of NEA, on the tie-ins. I would assume that we should be able to finish tomorrow.

The COURT: Here is what I am going to do. We must get through some time. I will stay here until doomsday tomorrow if you tell me about five o'clock you think you can get through, otherwise I will have to use Friday. I mean, there is no use beating your head off Thursday night unless you hope to accomplish something. So we will evaluate that as we go along. Good night, gentlemen:

(Thereupon the Court was in recess at 4:30 P.M.)
2694 Proceedings of July 13, 1967, commencing at 10:00 A.M.

Mr. MOORE: If your Honor please, concluding the Greater Buffalo defense I would like to just offer in evidence and read one page of a deposition of Frank J. Nicht, taken at the behest of the Government, pursuant to the Federal Rules, on March 3, 1961, and on March 20, 1961. Your Honor will recall that parts of this deposition heretofore have been read in

evidence by the Government. I want to read just one page. I think it is probably easier to read it into the record than to offer it. Reading from page 144, beginning at line 23, a question directed to the witness by Mr. Feldman:

"Q. Do you recall testifying that King issues or offers no announced uniform price list in regard to either features or in regard to color comic supplement printing?

A. I think I said that.

2695 Q. Do you recall also testifying that the prices reached, whether they be as to features or whether they be as to color comic supplement printing, are usually arrived at after negotiations with the salesman and the particular newspaper publisher involved?

A. I got off there.

Q. All right. The prices reached as to sale of either features or color comic supplements are arrived at as a result of negotiations?

A. That's right.

Q. These negotiations are usually between your salesman or King Features Syndicate and the particular publisher involved?

A. That's right, sir.

Q. In the past have publishers gotten even better prices for features if purchased along with color comic supplements and, vice versa, gotten better prices for color comic features if they purchased features simultaneously?

A. Yes, sir."

Then finally, your Honor, we would like to incorporate in this record, not physically because the transcript is already
2696 done, make it part of the record the proceedings held before this Court on the occasion of the testimony taken on October 25th and 26th, 1961, in connection with the Government's application for a preliminary injunction, and the subsequent testimony and exhibits taken on, I believe, December 18th and 19th, 1962, in connection with the motion of Greater Buffalo to modify the preliminary injunction. As I say, I don't offer those physically, I would ask they be regarded as part of this record so that all counsel, without regard as to whether they offered the testimony or not, be at liberty to advert to it in their arguments presented at a later date to your Honor.

The COURT: What is your position on that?

Mr. BERNSTEIN: For the record I will state that I believe it is incompetent, but in the interest of saving time and expediting, rather than getting the witnesses here, we will not object.

2697 The COURT: I will receive that and consider it part of the record.

Mr. MOORE: We rest, your Honor.

The COURT: Now, you made some motions at the end of the Government case, as I recall, for dismissal.

Mr. MOORE: We would renew those motions at this time. I would expect that your Honor would prefer that these matters all be dealt with, if not at length, on a full scale in a brief and we later have oral argument?

The COURT: I think so. What did I do on your motion, reserve or deny?

Mr. MOORE: You reserved, your Honor.

The COURT: I did the same with NEA?

Mr. STEVENS: Yes. We would like to renew our motions at this time.

The COURT: Same ruling, I will reserve again on the motions.

Mr. STEVENS: Thank you, This is a folder of material which we will offer as an exhibit.

2698 (Thereupon documents referred to were marked Defendant's Exhibits N-1 through 12 for identification.)

Mr. STEVENS: If your Honor please, NEA will call Mr. Earl Anderson to the stand.

EARL ANDERSON, called as a witness in behalf of the defendant NEA, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. STEVENS:

Q. Your full name and age, please?

A. Earl Henry Anderson, age 56.

Q. Where do you live?

A. I live in Cleveland, Ohio.

Q. Are you married?

A. Yes, married.

Q. What, if any, family do you have?

A. Six children.

Q. What is your educational background?

A. I was graduated from the School of Journalism at the University of Minnesota in 1932.

Q. And what business are you in?

A. I am in the newspaper feature business.

2699 Q. Is that with Newspaper Enterprise Association, Incorporated?

A. Yes, I am vice-president and business manager of NEA.

Q. That is familiarly known as NEA?

A. It is known as NEA.

Q. Was it formerly and actually named NEA Service, Incorporated?

A. Yes, it was for a long while known and formerly known as NEA Service, Incorporated.

Q. But—

A. Changed that to Newspaper Enterprises Association.

Q. Who owns NEA?

A. NEA is owned by the E. W. Scripps Company.

Q. What is the nature of its business?

A. Basically we are a newspaper feature service. We are a service organization for daily newspapers, primarily. Newspapers have their daily news, local news, wire news, from Associated Press and United Press, and they want to build up their newspaper with more features of general interest, and these are the type of features we supply, as a service, to the newspapers. This would include the daily comics they have, the editorial cartoons, the news background and feature material columned by a doctor, columned by a Washington specialist, all the
2700 features that newspapers need to put out a paper, except the local and wire news and, of course, the advertising.

Q. In the answer which NEA has filed it denies that it is a syndicate. Can you explain that to the Court?

A. Yes, I can. We are a newspaper feature service. We do not sell to the daily papers our features on a separate or syndicated basis. We go to newspapers, they become clients of ours, they obtain from us everything we produce for the daily newspapers, as opposed to selling features separately as the syndicates do.

Q. How do you describe the service or services which NEA sells?

A. Well, we describe it as a feature budget service.

Q. Is there something called a full service?

A. We have three different services. There is the full service,

and this includes most everything we produce for daily newspapers, for the larger papers. For the smaller papers, for their convenience, we divide this up into two smaller services; one is called the Pony Service, and this normally goes to newspapers of up to 4,000 circulation; and we have an Intermediate Service, the next size, that has a few more features in it, still much less than our full budget, and this normally is sold to
 2701 papers of about 6,000 circulation; and then the full service is our complete production for newspapers.

Q. Handing you a copy of Exhibit N-1, I will ask you if you will tell us what that document is?

A. Yes, this is a listing of all these features that we produce for daily newspaper publication, this is our full service.

Q. In other words, that is the brochure or informational matter which NEA has, describing its full service?

A. That is right, we sent it out to newspapers, and salesmen use it to show what NEA is offering to their clients in the full service.

Q. Will you look at the pink sheet, which is marked Exhibit N-2, and tell us what that is?

A. This is the sheet we sent to newspapers to show—to list for them the features that are in the Intermediate Service.

Q. That is the service which is available to newspapers with circulations between 4,000 and 6,000?

A. Up to 6,000 circulation.

Q. And here is one on a light yellow or buff sheet, which is marked Exhibit N-3, will you tell us what that is?

A. This is a listing we use, we send it to newspapers, our salesmen use it to show the newspapers the features
 2702 that are included in our Pony Service, which is sold to newspapers with up to 4,000 circulation, the small newspapers.

Q. Do I understand you correctly, that the object of these services is to enable a newspaper to publish in addition to the services that newspaper has, local news and a wire service?

A. That is correct. Now, the newspapers, of course, have all this material, they don't necessarily use all of it, but they have it there for their editor to select, to use as they wish. They may buy other features from the syndicates to fill in their requirements.

Q. How long have you been associated with NEA?

A. I have been associated with NEA for thirty years.

Q. What prior business experience did you have?

A. I was graduated in 1932, in the depression, I worked for small newspapers around Minnesota on circulation and advertising and promotional campaigns. In 1935 I joined the Minneapolis Star as promotion director, in the circulation, editorial and advertising fields. I left the Minneapolis Star in 1937 and came down to NEA.

Q. When you say "down to NEA", you mean you came to Cleveland, I take it?

2703 A. I came east to Cleveland.

Q. Down geographically. What have been your prior positions with NEA before becoming vice-president and business manager?

A. I was promotion manager of NEA from that time until I entered the Army in 1942. I was in the Army for three years as a combat correspondent for the Army Weekly. I returned in 1945 as assistant to the general manager of NEA.

Q. Now, you were, of course, connected with Buffalo Color Press, Incorporated, were you not?

A. Yes. In early 1953 I came up to Buffalo as general manager—vice president and general manager of Buffalo Color Press.

Q. Who was your immediate superior here at that time?

A. Mr. L. E. Herman. Leon Herman.

Q. He has since passed away?

A. Yes, he had a serious heart condition.

Q. Where was Buffalo Color Press located in 1952 to 1955?

A. They were on Carroll Street in Buffalo.

Q. Were those premises owned by Buffalo Color Press?

A. We leased the premises there, paid \$350.00 a month for them.

Q. What was the nature of its business in that period?

2704 A. We were in the business of printing color comic supplements and, also during that period, comic magazines, the insides of comic magazines.

Q. You mean comic books?

A. Comic books.

Q. What is a color comic supplement?

A. A color comic supplement is what we call a funny paper. It is a supplement in the paper, a section of the newspaper, that is made up of copyrighted features from one or more syndicates usually printed in four colors. It may be of various sizes,

four pages, six, eight, ten, twelve, or it may be of a tabloid size or full size.

Q. What is a readyprint?

A. A readyprint is a supplement in which one—in which two or more newspapers share the cost of setting up the section, of getting it on the press. We refer to it as a makeready. I believe the Judge referred to it as a setup charge, comparable to an engineering business. But the newspapers—two newspapers or more share the original makeready setup charge.

Q. Will you examine the item headed the Alice Daily Echo for Sunday, June 11, 1967, which is marked Exhibit N-4, and tell us if that is a readyprint produced by NEA?

A. Yes, this is a readyprint sold by NEA. It is sold 2705 to the Alice Echo in Alice, Texas, a nice little town in Texas. I think its population may be 20,000. However, the newspaper has a circulation that requires only 5,500 of this particular section. This is a six-page section, and this happens to be all NEA.

Q. Will you examine Exhibit N-5, which is headed Suffolk News Herald comic section, Sunday, June 11, 1967, and identify that for us?

A. This is exactly the same section as the previous one in content except the name of the paper has been inserted on the top and the date line changed. Suffolk is a Virginia city, about 12,000 population, between Norfolk and Richmond. I believe, and they buy about 7,500 of these every week.

Q. In other words, Exhibits 4 and 5 are wholly identical except for the name of the paper and the city of location in the case of the Suffolk, Virginia section, am I right?

A. That is correct.

Q. Do other small papers also buy this same section with the name change of the paper only?

A. Yes. On that particular run we may have about twenty-five of those small papers getting basically the same section.

Q. By "basically" you mean some of them get exactly 2706 the same?

A. Some get exactly the same.

Q. Some have a small change?

A. Some make a change of feature here and there.

Q. You say that Exhibits N-4 and N-5 contain comics which are licensed by NEA, am I right?

A. That is correct.

Q. Is that true of each of the comics appearing in those exhibits?

A. In these exhibits that is true of all of them, yes.

Q. Does NEA also have what has been referred to as an eight-page standard readyprint section?

A. Yes. This one is typical of the type of section we have. We have an eight-page standard section, we have a ten-page standard section, we have an eight-page—small eight-page tabloid section and sixteen-page tabloid section.

Q. Now, taking the eight-page standard section because that is closest to the six-page section which is in evidence; is such a section or can such a section be filled wholly with comics licensed by NEA?

A. No, we don't have—NEA has only twenty Sunday comics. The normal eight-page section will have twenty-two, twenty-three comics in it. So we can't, from NEA, fill up an eight-page section.

2707 Q. Will you examine Exhibit N-6, on green paper, headed Sunday color comics, and tell us what that is?

A. This is a list printed and prepared and sent out to newspapers, and used by our salesmen to list and describe the Sunday comics that NEA has available for sale, which the rights are for sale on these comics.

Q. Do other syndicates have more than twenty Sunday color comics for licensing?

A. Yes, some of them have more.

Q. Which has the most?

A. To my knowledge, King Features has the most Sunday comics for sale.

Q. Do you know how many?

A. They have about forty-nine or fifty Sunday comics, at least, for sale.

Q. And according to their advertising, some that sell in a very large number of papers?

A. That is right. They are in most of the big metropolitan centers.

Q. Which are those, can you name them?

A. Well, they are in New York, they are in Chicago, in Los Angeles, in Detroit, in all the large metropolitan areas.

Q. And which are the comics in the King line which are apt to appear or do appear in those cities, if
2708 you know?

A. The most popular comic is perhaps Blondie, Beetle Bailey——

The COURT: How about Joe Palooka?

The WITNESS: Joe Palooka is handled by the McNaught Syndicate.

The COURT: I wondered where Joe disappeared to. We never see him in Buffalo. That isn't one of yours?

The WITNESS: No, that is from the McNaught Syndicate. The only comic we sell in Buffalo is one to the Buffalo Evening News, I believe the Saturday News, Kevin the Bold, and the Courier-Express uses Carnival.

By Mr. STEVENS:

Q. How many syndicates or other feature organizations are there selling Sunday color comics?

A. Well, Editor and Publisher lists about 200 syndicates. Of those selling Sunday comics, I suppose there is 20 of them.

Q. And when you refer to Editor and Publisher, that is the magazine of the newspaper industry?

A. That is right, trade magazine.

2709 Q. Now, what is the effect on cost of being able to sell a color comic section which has become a readyprint to Alice and Suffolk, as shown in Exhibits N-4 and N-5?

A. Well, take the example of Alice. In this case we have been able to spread the cost of the makeready or setup charge over about 30, 40 newspapers, so that there is very little charge to Alice for the makeready of getting this section on the press. one is following the other, we stop the press only to put the heading on. Now, if Alice were to have a supplement entirely of their own, if there were no readyprint business in this country, Alice would have to go to a printer and say "Put this section on the press for me and print it"; this would cost about \$180.00 for the makeready charge. This syndicate, or whoever is selling, would have to pay and pass it on the newspapers. \$180.00 from Alice, Texas, is almost \$10,000 a year, it would be out of the question for them to have it. So this is the saving that comes to the newspapers by being able to have readyprint sections of one kind or the other going from Alice to Suffolk and on down the line.

Q. Where is the readyprint, exhibited in N-4 and N-5. printed?

A. That particular section is printed at Wilkes-Barre.

2710 Q. And are you able to ship the Alice section, Exhibit

N-4 from Wilkes-Barre to Texas and still deliver it there more economically than Alice could have it printed singly in Texas?

A. That is the interesting part of this business. In some cases the saving that you can make by having a readyprint section, absorb the makeready, allows you to jump over some of the geographical lines. You can save enough in some instances to print a paper in Wilkes-Barre, and deliver it way down to Alice, Texas. As a matter of fact, we have a section printed in Wilkes-Barre and delivered to Wenatchee, Washington, way out on the west coast. It happens that makeready saving is enough to overcome the delivery differential from another point on the west coast. This isn't true all the time, but it is an indication of the savings there are in this business. We are just completing an arrangement now to supply a comic section to Eureka, California, even further away, and bids were made there by Acme Color Print, by NEA for Acme, and for NEA out of Wilkes-Barre, on a six-page standard readyprint section. The savings on the readyprint section were enough to carry the delivery way out to Eureka. We have delivery problems once in a while but we get them there on time.

2711 Q. In other words, NEA, with reference to Eureka, placed a bid for the business on a readyprint section out of Wilkes-Barre and a section out of Acme down in San Bernardino, California?

A. Correct, and it happened that at Wilkes-Barre we had a makeready that more closely met the needs of this particular publisher than at Acme.

Q. To sum this up, without extending it, is it fair to say that without the opportunity to have makeready, to have readyprints, color comic sections would be prohibitive to most small papers?

A. It would be out of the question. There are other things newspapers can do, they don't have to have a color comic section, they can have a TV guide. They look at the cost of that compared to the newspaper supplement, or the cost of a weekend entertainment section, which they may print in one or two colors, as compared to the cost of the newspaper comic supplement, and these costs have to be in line.

Q. Returning to Buffalo Color Press; what percent of this business was attributable to color comic supplements generally or readyprints in 1955, if you recall?

A. In 1955 all of the Buffalo Color Press business was newspaper comic supplements.

Q. In other words, the comic book business you mentioned earlier had evaporated?

A. Yes. We had some comic books, it was quite profitable for a while, and starting after the war, 1950, 1952, 1953, this became a very competitive situation, lots of plants were printing them, newsprint was scarce, and Buffalo Color Press couldn't produce an entire comic book, we could do the inside, and then we had to do the inside, bind them, send them to J. W. Clement Company who printed the covers and put the inside in the covers and then did the stitching, and we were not in a good competitive pricing situation, and we lost all of our comics.

Q. How did Buffalo Color Press get its color comic supplement business in 1955?

A. In 1955 they came actually from three sources. NEA supplied us with about a third of our business in the readyprint. The Scripps-Howard newspaper Sunday comic sections, which we sold directly from Buffalo Color Press, accounted for about the other third. We had one metropolitan client, the Chicago Daily News, which Buffalo Color Press handled directly, and this one Saturday afternoon paper in Chicago accounted for the other third of our business, generally.

Q. With reference to the Chicago Daily News run; was Buffalo Color Press really adequate to print it?

A. No. We were in trouble with the Chicago Daily News toward the last because they wanted to get their—two things they wanted—we had to take the sections off the press, wrap them in bundles of about fifty in order to handle them and get them on the truck. Chicago Daily News wanted to get them on skids.

Q. In other words, what we call palletizing?

A. Palletizing is the word, yes. We just didn't have the room in our plant to do this. This was one problem. Also the Chicago Daily News was getting a little more advertising and they wanted to increase the size of this section from a sixteen-page tabloid section to a twenty-page tabloid section. We didn't have the facilities at Buffalo Color Press to print a twenty-page section, so we were heading for trouble.

The COURT: Excuse me, is that the type of thing you find inserted in the comic section, like an ad for cereal or something, there is a cartoon with it?

The WITNESS: Yes, the comic advertising is printed right in the section along with the comics.

The COURT: That was increasing in this newspaper 2714 and you were in trouble meeting their requirements?

The WITNESS: That is right, they wanted more pages. Comic advertising was important in the comic readyprint development. With the coming of TV, it hurt this business. NEA spent a good deal of time and money on promoting the use of Sunday comic advertising, through the advertising agencies, in order to help the industry as a whole. This was part of a contribution to it, and advertising is coming back.

The COURT: I suppose you mean that so much of this stuff is on TV, particularly it seems on Saturday morning, that satisfies the kids without the appeal of the color comics?

The WITNESS: That is right. The advertiser had so much money to spend, and if you are selling a cereal, you decide whether you can do better on the comic sections or on TV, TV being quite effective.

2715 By Mr. STEVENS:

Q. Will you describe the printing and related equipment Buffalo Color Press had, as you knew it, in 1955?

A. We had four presses, each one with—the biggest, the largest capacity was an eight-page standard section. These four presses were at least fifty years old. I know one of them didn't have a serial number on it, it was so old. Goss had started putting serial numbers on these presses fifty years prior. This was real old equipment, on the printing side. We had no typesetting facilities, no engraving facilities, no bindery, we had no warehouse, no room for storing newsprint or such.

Q. What about the rate of production on this equipment?

A. Well, the presses would run at about 6,000 per hour.

Q. Compared with what an up-to-date press would run?

A. I suppose today they run at least 30,000 an hour, perhaps better. But that allowed us to give good quality, a good-looking section, and we had many satisfied customers as long as we could turn them out.

Q. What about the maintenance and repairs on this old equipment?

A. We had no machine shop, no room for one. We were constantly besieged with breakdowns and problems of getting the sections out. This is a perishable business, the newspaper expects its comic sections there on the date, and you 2716 can't afford to deliver on the following Monday the sections that are supposed to be in the paper Sunday. That is a real pressing problem for any printer in this ready-print or supplement printing field, you've got to deliver.

Q. What had been the trend of earnings in Buffalo Color Press in the years say from 1952 down to 1955?

A. I came—

Q. Were they skyrocketing up?

A. The trend—I came to Buffalo in 1953 and the previous full year before I arrived the profits were \$50,000.

Q. What were they in 1955?

A. In 1955 they were less than \$17,000. I should have stayed home.

Q. Was any consideration given to modernizing the plant and equipment of Buffalo Color Press while you were associated with it?

A. Yes, there was.

Q. Over what period of time?

A. Well, from the time I arrived in 1953 until the time it was closed.

Q. And what was done?

A. Well, you start with the fact that you can't modernize or build in the location or the area where Buffalo Color Press was. There was no siding, it was small quarters, and so 2717 there was no chance to build or expand there.

Q. In other words, you had to have a whole new plant?

A. Yes, we did.

Q. Or a different plant, at least?

A. That is right. There was no chance of modernizing the old plant. We had to start thinking, if we thought at all, of going into a new plant, and we looked into this, and we came to the conclusion that anything we did in order to produce the kind of volume needed in this business would cost at least \$1,000,000.

Q. Was it practical or possible for Buffalo Color Press, from a business point of view, to make any such outlay?

A. No, we didn't have the volume to sustain a national size

plant, so it wasn't practical. From what we had to do, it wasn't practical for us to spend a \$1,000,000.

Q. From your point of view as business manager and, I believe, vice-president of Buffalo Color Press in 1955, what alternatives, business alternatives, did that company face?

A. One alternative was just to close up the business and notify our customers that we were no longer in the business and couldn't do the printing for them, that is one alternative. The

other alternative was, while we still had a going business, to sell it and take advantage of the assets we had.

Q. And that, of course, is what you did?

A. That is correct.

Q. And the assets of Buffalo Color Press were sold to Greater Buffalo, were they not?

A. That is correct.

Q. What were those assets that were sold?

A. Well, there was the physical plant, the supplies we had, the good will we built up with the customers in supplying them faithfully over the years with sections of good quality—

Q. By—

A. And the plant.

Q. And by good will you mean that business which was represented and being carried out in the Buffalo Color Press Plant?

A. Certainly.

Q. And how did you arrive at a price to put on, for example, anything like the business and good will which you were selling when this transaction occurred?

A. Well, we priced it, as you do in the market, at the very best price that the business would bring anywhere. Obviously, we had—if these assets weren't worth anything, we had to find

a printer who would do the job, deliver the comic sections faithfully and take care of the customers that we had.

Q. In other words, you had to be paid for the good will by somebody who could carry on the business and enjoy the benefits of it after the transfer.

A. Certainly, if the sections weren't delivered the good will we'd built up wouldn't be worth much.

Q. You took part, did you, in the negotiations for the sale of the assets of Buffalo Color Press?

A. Yes, I participated.

Q. When did they commence?

A. There had been some talk about it earlier, but the real talk about selling Buffalo Color Press started in, to my best recollection, early summer of 1955.

Q. And at that time did you have any knowledge that Greater Buffalo Press was negotiating for the purchase of International Color Printing Company?

A. No, we certainly didn't.

Q. When did you first learn of that fact?

A. The first I learned of it was from a letter Herb Walker wrote in early October.

Q. To refresh your recollection, was it October or August?

A. I'm sorry, August.

Q. And by the letter written by Mr. Walker, you refer to the exhibit marked P-51, dated August 2, 1955, do you not?

2720 A. Yes, that is right. This is the first knowledge we had.

Q. Mr. Walker was then in what position with NEA?

A. He was vice-president and general manager of NEA.

Q. He has since passed away?

A. That is right. Correction, he was president and general manager.

Q. Of course, the sale of the assets of Buffalo Color Press is reflected in the document marked Exhibit P-27, dated October 20, 1955, is it not?

A. Yes, that is the document.

Q. Returning to Exhibit P-51, you are the E.H.A. noted for a carbon at the bottom of the letter, are you?

A. That is right.

Q. I take it, to your knowledge, no one else in NEA had any information about Greater Buffalo's purchase of International before August 1955?

A. I am certain of that.

Q. Going further, did you know of anything at the time of your negotiations with Greater Buffalo for the sale of Buffalo Color Press about an alleged conspiracy between Greater Buffalo and King Features Syndicate to divide markets and/or fix prices on color comic supplements?

A. We had no idea.

Q. When did you first hear anything about such an
2721 alleged conspiracy?

A. The first time I heard about such a conspiracy was in connection with this case.

Q. In other words, when the complaint in this case was filed, you first saw it?

A. That is the first time I ever heard of it.

Q. To your knowledge, did anybody else in NEA?

A. No, nobody else.

Q. Now, what service did NEA—

The COURT: Excuse me. Did you ever hear anything in the wind about maybe an investigation along those lines before you got the complaint?

The WITNESS: No, sir. We heard a great many rumors about somebody going into Sylacauga, somebody going to Lufkin, we were busy chasing down those rumors about where the printing plants were going to start.

The COURT: You must have been startled when you were made a party defendant, something you had no dream about before?

The WITNESS: Yes, it was.

The COURT: There was nothing that was in the trade,
2722 as a rumor, that this was a likelihood?

The WITNESS: No, not to my knowledge.

The COURT: I take it then that NEA or any of its companies if there are more, never had anybody inquire of them in a manner that might lead to make you think there was an investigation going on?

The WITNESS: Not until the investigation actually started.

The COURT: After the complaint?

The WITNESS: After the complaint, yes.

Mr. STEVENS: I think, for the Court's information, I am not sure Mr. Anderson understood the question, Mr. Anderson was a witness in the Grand Jury investigation.

The COURT: I am not talking about that. Until the thing became obviously a proceeding with which you were concerned, there had been no preliminary investigation, a visitation by Government people to your office or anything?

The WITNESS: Well, yes, there was a visit to our
2723 office. We cooperated with the Government in the visit for our documents.

The COURT: That was the time when you became aware that there might be something in the wind; before that there was nothing that had been brought to your attention?

The WITNESS: We didn't become aware of this complicity that the Government is trying to develop between Greater Buffalo and King. We became aware of this so-called—our involvement in the features.

By Mr. STEVENS:

Q. What services, if any, did NEA render its customers whose color comic supplements were printed at Buffalo Color Press before the assets of that company were sold?

A. On the business NEA placed in Buffalo Color Press we were merely the printers and shippers. NEA did all the selling, all the servicing, they saw that the advertising insertions were handled, that the changes in the size of the run, the length of the run, was handled, and they called on the newspapers
2724 to see that the delivery was there on schedule. They did all the billing, all the collecting, we merely printed the sections and shipped them.

Q. NEA held the contracts with the newspapers?

A. NEA held the contracts with the newspapers.

The COURT: Excuse me, could I ask a question? Mr. Anderson, you were down here in Buffalo as I understand it, with Buffalo Color Press prior to the time that organization was sold to Mr. Koessler. Do you have any recollection of who first opened negotiations for the sale, how that came about, that is, was there an offer by you or your company or was it Koessler that made a pass to buy, or do you remember?

The WITNESS: I think it was kind of a natural coming together. We had come to depend on—Buffalo Color Press had come to depend on Greater Buffalo Press to some extent in helping us keeping the plant running. They had the warehouse of supplies, they had a machine shop, and we would on
2725 occasion call on them to help us out of difficulty, to get our presses going, and this became kind of a mutual getting together. Early—I'm trying to recall—early in 1955 when our plant had DC equipment, the power company told us they would not supply direct current, we had to put in alternators, and those—the week after they broke down, our plant was down, we had to move most of our production for that week over to Greater Buffalo, and this was kind of an eye opener when we got the billing from them, to see that it

really cost us more to print these sections. So this was a mutual coming together.

The COURT: Was that about the time you had the \$17,000 year?

The WITNESS: This was—yes, this was the last year, in which we were down to \$17,000 profit.

The COURT: All right.

2726 By Mr. STEVENS:

Q. You were saying that you found out it was really cheaper for Buffalo Color Press to have the runs printed by Greater Buffalo than to print it themselves?

A. It appeared that way. Actually, some of our prices were higher than Greater Buffalo's standard prices, that is why we made the \$17,000.

The COURT: I don't want to interrupt you, Mr. Stevens, but things occur to me, and since we have no jury, I hope you don't mind.

Mr. STEVENS: Surely, that is fine.

By Mr. STEVENS:

Q. You have described the services which NEA rendered to its customers whose printing was done by Buffalo Color Press. Do you know whether NEA has continued to render the same kind of service to such customers as it still has, of those listed on Appendix B, in Exhibit P-27?

A. Yes, NEA has continued to render the same service to all of these customers that they still have.

Q. Through whom does it render that service?

A. It renders the service through its sales and service organization. NEA has a sales—a vice-president in charge of sales, a sales director, we have a readyprint clerk, we have seven salesmen around the country who render this service to the newspapers.

2727 Q. Has that organization been substantially of the same structure over the last ten, twelve years?

A. Yes, it has.

Q. How did NEA enter the comic color supplement field, if you know?

A. Well, I don't know exactly. It goes back quite a long time, I think in the early thirties—I know it was before I was with NEA—we were in the business largely with a small eight-page tabloid comic section, going out to small newspapers, and from that we had quite a growth.

Q. Returning to Exhibit P-27, and Appendix B therein, has NEA lost any of the customers which it had in 1955 or that are listed on that exhibit?

A. Yes, I see some here that are no longer NEA customers.

Q. Could you name two or three of them, please?

A. Well, Kankakee, Rome, I believe.

Q. How about Kokomo?

A. Kokomo, Indiana and, oh, there is St. Augustine, Florida—

Q. That is sufficient. I would like to ask whether NEA 2728 receives any payment from Greater Buffalo or anyone else on these runs which it had at the time, had in Buffalo Color Press at the time of the sale of its assets, and which NEA no longer has as customers?

A. No. If NEA loses the paper as a customer, Greater Buffalo Press no longer ever makes payments for that customer, even though King may get it, it may go down to International, NEA isn't paid for that run at all.

Q. Would you name say a half dozen of the other feature organizations, whether syndicates or not, that are selling color comic features or licensing them?

A. The Chicago Tribune is selling comic sections, comic features; United Features is selling comic sections. Of course, King is selling comic sections, and Acme Color is selling comic sections, not features.

Q. Which is the largest of the feature organizations selling color comic supplements?

A. King Features is the largest.

Q. Which, in your experience, is the toughest competition?

A. King Features.

Q. How long has that been so?

A. That has been so for the thirty years I have been with NEA.

Q. Where, if you know, did King have its printing done in the early fifties?

A. In the early fifties they had it done, I am sure, in 2729 Wilkes-Barre, International Color Printing, and perhaps Peoria.

Q. And what knowledge did you have of the printing rates which King Features had at International at that time?

A. I knew they had an arrangement with International—I don't know where we came by the information—I knew they

had an arrangement whereby all the sections were priced at the same per thousand, regardless of the makeready that went into the section, regardless of the length of the run.

Q. And regardless of the page changes?

A. Regardless of the page changes. King paid International, to the best of my knowledge, so much per thousand regardless of the page changes, regardless of the length of the run.

Q. What effect did that have on the cost to King upon a short run?

A. On a short run it meant King, to the best of our knowledge and belief, had a lower price from International than we were able to get from any other printer in the country, including Greater Buffalo Press. On a short paper we had to absorb some of the makeready. If it were not on makeready, we had to pay it all. We had to pay \$10.00 per page for every time in an eight-page section a publisher wanted three different comics in there from somebody, we had to pay \$10.00 for that. To the best of our knowledge, King wasn't paying this.

Q. And how did your rates then for NEA with Greater Buffalo compare before and after the sale of Buffalo Color Press?

A. Basically, we figured at Greater Buffalo Press that we—King, at International, had the advantage on a run up to about 80,000, maybe 100,000. On a larger run we had the advantage. International had the advantage on a smaller run.

Q. Is that because on the larger run the makeready charge, which you had to pay with Greater Buffalo, was absorbed and spread over a larger number of units?

A. That is correct.

Q. In other words, to use the Judge's analogy, it is just as though you had a setup charge or a cost on a turret lathe, and instead of running one hundred pieces, you run ten, fifty or one hundred thousand?

A. That is right.

Q. And was the rate which NEA had with Greater Buffalo after the sale of Buffalo Color Press, the assets of Buffalo Color Press, the same as the rate which it had with Greater Buffalo before the sale of the assets of Buffalo Color Press?

2731 A. The rate was the same, with the payments made under the contract.

Q. It is a fact, of course, that NEA did have certain runs

printed by Greater Buffalo before the sale of the assets of Buffalo Color Press?

A. Yes. NEA was a customer of Greater Buffalo Press before we sold. We couldn't handle Buffalo Color Press. NEA was a customer of Greater Buffalo Press before we sold Buffalo Color Press.

Q. There has been a good bit of talk about a meeting at the Hotel Beverly in New York City. Did you attend that meeting?

A. Yes, I was at that meeting.

Q. To the best of your recollection, when was it held?

A. It was held either in the very late winter of 1955 or early 1956, to the best of my recollection.

Q. How did it come to be at the Beverly?

A. Mr. Walker, who was then our general manager, usually stayed at the Beverly.

Q. Who was there?

A. Mr. Walker and Mr. Koessler, Walter Koessler, Mr. Nicht and myself.

Q. What was said and by whom?

A. It was a short meeting. I don't recall what was said and by whom. I recall that Mr. Nicht—Mr. Koessler introduced Mr. Nicht to Mr. Walker. Walter Koessler, his
2732 testimony refreshed my memory that there was somebody else in the suite, a friend of Mr. Walker's in the suite, he was in the other room. Mr. Nicht came in, we stood in the hall and talked for such a short time, it was in the winter, Mr. Nicht didn't take off his coat, we just stood there a very brief time and—

Q. If you can't recall what was said by whom, what was the substance of what was said?

A. The substance of what was said was that we would have a truce, that we would not try for each other's business by price-cutting each other's business.

Q. You mean on existing readyprint runs?

A. Yes, on existing readyprint runs that NEA had, the existing readyprint runs that King had, we would stop the price-cutting.

Q. Did Mr. Koessler take part in that discussion?

A. I just don't recall. I know too that Mr. Walker was upset; King was using his features, he thought, to keep—using his printing to keep NEA comics out of the sections he printed.

I think he had that on his mind. I don't recall, past the introduction, what Mr. Koessler said.

Q. Between whom was the truce, as you describe it, 2733 made?

A. Between King and NEA.

Q. Was Greater Buffalo a party to that?

A. No, no.

Q. What function did Mr. Koessler serve at that meeting?

A. Well, Mr. Walker never met Mr. Nicht previously, I am sure.

Q. Had you ever met Mr. Nicht?

A. No. And so he introduced the two of them and also me.

Q. Mr. Koessler introduced Mr. Nicht and Mr. Walker and—

A. And me.

Q. Mr. Walker and Mr. Nicht and you?

A. That is right.

Q. To your knowledge, did Mr. Walker ever meet with Mr. Nicht again?

A. No, he did not.

Q. Did you ever meet with him again?

A. No, I have not.

Q. To your knowledge, did anybody else from NEA ever have another meeting or discussion with Mr. Nicht?

A. No, nobody ever had any contact with Mr. Nicht.

Q. You said that the understanding or truce was that you would stop price-cutting on each other's then existing ready-print runs, is that so?

A. Yes, Mr. Walker was concerned about the pressure that NEA was under at this time in the transfer— 2734 in the sale of Buffalo Color—he wanted to see if we could get a short time to find out where we were going.

Q. Did NEA actually adhere to that truce?

A. In some instances, yes, we did. Where we could really find a section where we could really swing it, we knew we had a good price, why we tended not to in sections where we really thought we had a chance to get the business.

Q. Did King adhere to the truce?

A. Not to my knowledge. I never saw any instance where they, to my knowledge, did. I know of some instances where they didn't.

Q. Is there a form, a written report, which NEA salesmen customarily use covering calls they make?

A. Yes, we have a form for a sales report.

Q. To whom are they sent?

A. They are sent first to the sales manager.

Q. And are those reports made in the regular course of NEA's business?

A. Yes, they are.

Q. How frequently?

A. Routine. Each salesman probably will write about 200 reports a year, and after he completes a trip he goes back 2735 and is supposed to write up the papers he called on.

Q. Referring to the exhibit marked P-36, dated January 19, 1956, is that such a report?

A. Yes, that is an NEA sales report.

Q. Who wrote it?

A. It was written by R. C. Whitehead, our salesman in the southeast.

Q. Is he still your salesman?

A. He is now partially retired. We have another salesman down there.

Q. There are initials typed in the upper right hand portion of exhibit P-36; is yours among them?

A. No, I don't see it, no.

Q. Regardless of that fact; do you recall seeing Mr. Whitehead's report, P-36, at or about the time it was received in Cleveland?

A. Yes, I think so. I was familiar with it.

Q. Now, it refers to a call which Mr. Whitehead made on the General Newspaper Group in the southeastern United States, does it not?

A. That is right. Their headquarters were in Atlanta.

Q. The document is headed General Advertising Service, Incorporated?

A. Right.

Q. What relation, if any, did that have to the General 2736 Newspaper Group?

A. The General Advertising Service, Incorporated, was a group set up by the newspapers to sell advertising for this group of newspapers.

Q. And did they also have a color comic section?

A. Yes, they had a color comic section.

Q. Having exhibit P-36 before you, can you tell us whether or not NEA could profitably have accepted the General Newspapers color comic section at that time on the terms offered?

A. I don't see how we could have. King here offered to give twelve comics free to this group of newspapers in connection with printing supplements, and NEA can't be in the business of giving away twelve comics free.

Q. What about page changes?

A. We were selling—already selling some comics down there. King offered to make page changes as they went from one newspaper to the other, so the sections were not exactly alike. One paper would change a page or two. King offered to do this, according to Whitehead's report, for \$5.00 for each page change.

Q. What was your price?

A. Our charge from Greater Buffalo was \$10.00 for each page change.

Q. In other words, your cost was \$10.00?

2737 A. Our cost was \$10.00, yes, for each page change in the face of a \$5.00 page charge that King was quoting.

Q. So that with reference to P-36, regardless of what Mr. Whitehead said, because of the giving away by King of twelve comics and their pricing the page changes at half your cost, you could not have profitably accepted that business anyway?

A. No, doing business on this basis would have been no good for us.

Q. Will you examine P-38 and tell me whether that is also a standard NEA form of salesmen report, which you have described?

A. Yes, that is a standard NEA salesmen report.

Q. What does it state and what sales representative sent it in?

A. This is another report from Mr. Whitehead, who is our southeastern salesman, and the date he wrote it is March 21, 1957.

Q. What community does it refer to?

A. Jackson, Mississippi.

Q. Now, would you turn to exhibit P-39, which is next in the book you have; and that is a copy of a letter dated May 1, 1957, to Mr. Whitehead from Mr. Walker, isn't it?

A. That is correct.

2738 Q. And it also adverts to the paper in Jackson, Mississippi, does it not?

A. It does, it adverts to the paper in Jackson, Mississippi. It refers to his earlier report.

Q. Now, are those two exhibits an instance of adherence to the Beverly truce by NEA?

A. Yes, I think they are.

Q. Do you know of any other instance of adherence to that so-called truce after May 1, 1957, which is the date of P-39?

A. No, that was—to my knowledge, that was the last time that we ever adhered or tried to adhere to the Beverly truce.

Q. Do you know of any other instance before May 1, 1957, but after the meeting at the Hotel Beverly, where NEA undertook to get a then existing King readyprint run?

A. Well, we certainly tried in the case of the Lima, Ohio News, and we made every effort to get that.

Q. Will you examine exhibit N-7, being a sales report dated March 21, 1956, from H. R. H. to the Cleveland office, and tell us whether that reflects the efforts to get business away from King in Lima, Ohio?

A. Yes, it does.

Q. And who was H. R. H.?

A. That was Hal Hanson, then our salesman in that area.

2739 Q. And——

A. We thought we had a good chance to get that.

Q. What does exhibit N-7 reflect?

A. Well, it reflects the fact that on March 21, 1956 we were actively trying to get a comic section that was printed by King at Wilkes-Barre.

Q. Was that the last effort to get the business at Lima, Ohio for NEA, away from King?

A. No, sir, that has been a continuing effort ever since.

Q. Will you look at exhibit N-8, being a sales report dated January 30, 1957 from J. W.?

A. That would be James Weiss, who was then our salesman in that area.

Q. Is that also a sales report on a customary form from an NEA salesman to headquarters?

A. Yes, a typical sales report.

Q. What does exhibit N-8 reflect?

A. It reflects we are still trying to sell a readyprint color comic section to the Lima, Ohio News, in spite of the fact it was still being printed by King.

Q. Would you examine still further a sales report dated May 28 and June 3, 1957, from Mr. Weiss, and tell me if that is also on the standard reporting form which your salesmen used?

A. Yes.

2740 Q. And what does that reflect?

A. It reflects that the contract had renewed with King and we were marking it up for a followup, to try to get the business next time that the King contract expired.

The COURT: You are still talking about Lima?

The WITNESS: Yes, sir.

By Mr. STEVENS:

Q. Did you follow it up still further, do you know?

A. Yes, we have.

Q. You saw each of exhibits N-7, 8 and 9 at or about the time of their receipt in the home office?

A. Yes, I have seen those.

The COURT: I thought maybe we would take short recess now.

(Thereupon the Court was in recess at 11:20 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 11:50 A.M.)

By Mr. STEVENS:

Q. Mr. Anderson, we had just discussed prior to the
2741 recess, the efforts of NEA after the meeting at the Hotel Beverly, and before May 1, 1957 to obtain a then existing readyprint run in Lima, Ohio. Do you recall another instance or any other instance when NEA did that during that period?

A. I recall at least one, that was Lewiston, Idaho, where we were actively trying to get a King run.

Q. Who was the NEA representative there, if you recall?

A. That would be Sherman Montrose at that time.

Q. Handing you what has been marked for identification as N-10, dated October 15, 1956, I will ask you to tell us what that is?

A. This is a usual form of memo used by our salesmen when they are reporting a followup on a particular situation. Some-

times they use the regular report form and sometimes in following up they write memos to the sales manager. This was one of the memorandums.

Q. And is that a document which was received in the regular course of business?

A. Yes, that was received in our usual course of business.

Q. Do you know where the original of N-10 is?

A. No, I don't know where the original is.

Q. Where was that document, itself, obtained?

A. This was obtained from Sherman Montrose's file, in his office on the west coast, in San Francisco.

2742 Q. Did you become familiar with N-10 at or about the time of its receipt in Cleveland?

A. Yes, I would have been familiar with it.

Q. What does N-10 show as to activities of NEA in Lewiston, Idaho?

A. It shows we were actively, in October 1956, trying to take a run away from King Features.

Q. By run you——

A. I mean——

Q. You mean an existing readyprint run?

A. That King held, yes.

Q. Were you successful in that effort, if you know?

A. I don't recall whether we sold Lewiston at that time or not.

Q. Whether you did or not, you were actively engaged in soliciting and undertaking——

A. Yes, we were.

Q. Was that true at other points during the same period for NEA?

A. Yes, we were potshotting where we could at King's business.

Q. Now, did NEA ever take any affirmative step to advise its sales personnel not to follow the so-called Beverly truce?

A. Yes, we did.

2743 Q. When was that done?

A. Oh, that was done in—I don't recall the exact date we did it—I remember we wrote a memo telling them we were getting runs whenever and wherever we could.

Q. Will you examine exhibit N-11 and tell me whether that refreshes your recollection as to when the salesmen were advised in writing?

A. Yes. October 29, 1958.

Q. And was the advice to the salesmen given in the memorandum reflected in exhibit N-11?

A. Yes, this is the memorandum that was written to the salesmen.

Q. Who wrote that memorandum?

A. This was written by William Borglund.

Q. What is his position?

A. He is vice-president and manager of sales.

Q. Did you have any part in the preparation of N-11?

A. Yes, I did.

Q. Tell us what it was.

A. We normally sent out on a routine basis a list of all the readyprints we have on the presses so the salesman can, when he goes to a newspaper prospect, show him the various ready-

2744 prints we have, the makeups. It was time for this to come out, and I told Bill Borglund—at that time, as a salesman, he had never been in favor of any of my efforts to get a little breathing time on this printing business, to find out where we were—where we were going, and on the price of these things, and so he never agreed with it, and this was an instance where I told him, "Bill, put it in writing, this is gone, let everybody know about it and have no doubt about it." I believe I took it over to you and asked you to take a look at it for me.

Q. I don't want to testify, but I believe you are right. You refer to this document and to sending out a listing, showing the current makeup of all NEA readyprint runs in the first paragraph; just tell us what those listings of readyprint runs were again?

A. Well, as I previously said, we have on the presses ready-print runs in various sizes, eight-page tabloids, eight-page standards, the sixteen-page tabloid, the six-page standard, the ten-page standard, and this listing that we sent out at this time for the information of salesmen showed the makeup of each one of these sections that was on the presses, so that when they went to the newspapers and the newspapers said, "Yes, I would like a readyprint section", we would say, "We can save you money if you can conform your requirements to something close to what we have on the presses." So the salesman

2745 would take the list of all makeready we had on the

presses in all the various plants and go over it with the newspaper. That was a working tool for them. This is a sales engineering job a salesman would do on selling readyprint. It involved the transportation of the sections, showing the publisher it will be there Friday so he can deliver it Sunday, seeing that his advertising is handled properly and printed so the advertiser doesn't complain about the quality of the section, all these things, and this is one of the tools they used in promoting the sale of readyprint color comic sections in this country.

Q. So that the first paragraph of N-11 refers to the transmittal of a regular working tool, prepared in the central office of NEA and sent out to the salesmen?

A. That is right.

Q. Now, the second and third paragraphs are the paragraphs which refer, are they not, to a termination of any notion that there should be further adherence to the so-called Beverly truce?

A. That is right.

Q. Was that memorandum sent to all your salesmen?

A. Yes, it was sent to all salesmen.

2746 Q. And to your knowledge had there ever been any adherence by NEA to the so-called Beverly truce since October 29, 1958?

A. There has been absolutely no adherence to the Beverly truce after this date and very little prior to that date. This was just putting it in writing so that everybody would understand it.

Q. I believe you told us that you knew of no instance of adherence after exhibit P-39, dated May 1, 1957?

A. That is right, the one in Jackson, Mississippi. That is the last that I recall at all. I am sure that is right.

Mr. STEVENS: Your Honor, I have not offered yet the other exhibits. I would like to offer this out of order at this time so that I may read it to the Court.

Mr. BERNSTEIN: I have no objection to all the exhibits going in evidence.

Mr. STEVENS: Fine.

The COURT: I assume you have no objection to any of these exhibits, Mr. Moore?

Mr. MOORE: None.

The COURT: Received. Mark them all, and you can read that, if you please.

2747 (Thereupon Defendant's Exhibits N-1 through N-11, previously marked for identification, were received and marked in evidence.)

Mr. STEVENS: This is dated October 29, 1958, memorandum to all salesmen. "Dear Fellows: Here is your copy of our newly compiled listing showing the current makeup of all of the NEA readyprint runs. Please remember that this list is confidential, and that you should destroy your old one dated February 1, 1957. You can use this list most effectively as a reference in working up new sections to sell other newspapers. It has come to my attention that some of you have the notion that NEA does not want you to solicit readyprint business wherever that kind of business can be had at a profit. This memo will make it clearer to all of you that NEA wants you to solicit and obtain readyprint orders wherever such business can be found 2748 and wherever it can be handled properly. Sincerely W. H. B."

By Mr. STEVENS:

Q. I would like to ask you to examine certain exhibits which have been introduced in evidence on behalf of the plaintiff, and let us turn first to P-42. This is a letter, as you see, dated March 4, 1960, from you to Mr. Kenneth Koessler, regarding Sioux City, Iowa Journal. Will you tell us the circumstances under which that letter was written?

A. The Sioux City, Iowa Journal—this is a paper in Sioux City, Iowa—was buying a ten-page section from us, a 56,800 run. We had a cancellation here and they appeared to have a quotation from King that was so low we could not understand it. So I wrote to Kenneth Koessler at Greater Buffalo and told him that we were under price troubles here and that we would be able to keep the business by selling the paper at—getting a printing quotation from Greater Buffalo of \$15.82 per thousand, which was under their standard pricing.

Q. And did you—

2749 A. In other words, I asked for an exception to the standard pricing.

Q. And did you get that pricing and sell that section?

A. Yes, we got the pricing, we continued to print the Sioux City, Iowa Journal.

Q. Was your competitor King Features?

A. Yes, our competitor was King Features. It goes without saying.

Q. Does that letter have anything to do with the so-called Beverly truce?

A. No, this has no reference at all to the Beverly truce.

Q. As a matter of fact, both NEA and King were bidding and bidding hard for the Sioux City, Iowa Journal business?

A. That is right. That was merely an effort on our part to get a price which we could retain the run with.

Q. In the last paragraph of P-42 there is a reference to Fargo, North Dakota, the Fargo Forum, I believe it is?

A. Yes.

Q. Tell us what that is about?

A. We had the Fargo, North Dakota Forum as a customer for color comic sections.

2750 Q. Was that a —

A. That was —

Q. A readyprint one?

A. That was a readyprint run. It was on the same run as the Sioux Falls paper. Now, the only connection between these two papers at all is the name Sioux. Sioux City, Iowa is a town in Iowa, it is on the confluence of the Big Sioux and the Missouri River. Sioux Falls is in South Dakota. There is no connection here between these papers.

Q. Just a coincidence of similarity in names?

A. Yes. I wanted to get—Mr. Bernstein seemed to be confused about that—I wanted to make that clear.

Q. Now, you were just saying that you had a cancellation there?

A. That is right.

Q. Now, would you turn to P-43, the next exhibit, which is a letter dated March 15, 1960, from Walter Koessler to you?

A. Yes.

Q. Is that a reply to P-42?

A. The third paragraph is a reply to Fargo and Sioux Falls, which I mentioned in the last paragraph of my earlier letter.

Q. Examining the first two paragraphs of P-43; had you asked either Mr. Walter Koessler or Mr. Kenneth Koessler to talk to Mr. Nicht about his competitive practices around the date of that letter?

2751 A. No, no, I hadn't asked him to talk to Mr. Nicht at all. I told him that—in connection with Sioux City, Iowa—that we needed this special price in order to hold the run there.

Q. Now, who was your competition in Fargo?

A. That again was King Features. The salesman was a man named Rabinow.

Q. What is the reference in P-43 to "in excess of 100,000"?

A. Here, Mr. Koessler says, "Fargo and Sioux Falls go together, as I understand it, and the combined circulation is in excess of 100,000." What he was referring to here is that Fargo and Sioux Falls, South Dakota were in effect a readyprint run. These two papers—the makeup of the two papers was similar and it ran with one makeready, divided between the two papers, with one makeready cost, one setup cost, divided between the two papers. Our printing price was cheaper than if we had bought it for each of the papers. What Mr. Koessler is saying here is that 'when you have a run of 100,000 as a readyprint I am sure your printing prices should be competitive with what

King Features is getting out of International Color 2752 Printing.'

Q. Is this an illustration of what you told us earlier, that on short runs up to sixty or eighty thousand, King had the advantage on its flat rate price at International, but that you caught up with it and surpassed it at about that figure?

A. Yes, this is a perfect illustration of that. Mr. Koessler confirms that. If we get 100,000 with no page changes and divide the makeready between two or more papers, we are in a fighting position.

Q. Is that what you understood his letter to mean when you read the next to last paragraph "This job should present no problem competitively"?

A. Precisely.

Q. As vice-president and business manager of NEA, did you ask to have and request of your staff the preparation of a list showing NEA runs which King Features attempted to take away from NEA during the period from 1956 on?

A. Yes, I did.

Q. Did you also ask to have the same kind of information prepared as to runs which NEA attempted to take from King?

A. Showing the runs NEA attempted to take from King, yes.

Q. Did you further ask to have actual runs taken by 2753 NEA from King turned up?

A. Yes, I did.

Q. And the reverse, NEA runs taken by King?

A. Right.

Q. Were there instances where there was a surging back and forth?

A. Yes, there was some ping-ponging. We lost one to King, King took it from us, we got it back.

Q. Would that be reflected in King runs taken by NEA, then retaken by King?

A. That is right.

Q. And NEA runs taken by King and retaken by NEA?

A. Right.

Q. And were there any triple plays, where King took an NEA run, or vice versa, and it was retaken and retaken again?

A. I recall Key West, Florida bounced around pretty good.

Q. Would you examine exhibit N-12, and tell us whether or not that is a compilation of the lists, prepared at your request and under your direction, on the types of runs we have just discussed?

A. Yes, this is the list we got up of the runs that King had attempted to take from us from 1956 until 1960. Now, I don't pretend or don't say these are complete lists. We had to go back in old files. These are certainly the ones on which we had tried—in which we had tried to take the business away from King. I am sure there were others. This goes back twelve, fifteen years.

Q. And which King undertook to take away from you?

A. Right.

Q. The first category on exhibit N-12 is headed "King runs NEA attempted to take"?

A. Yes, that is right. These were runs which King had, newspapers King was selling readyprint color comic supplements to, which we went in and made an aggressive effort to try to sell the newspapers an NEA readyprint color comic section.

Q. I believe there are ten?

A. I think we found ten instances. As I say, I'm sure there were more but—

Q. You say this first category terminates in 1960?

A. This terminated in 1960. I couldn't bring it up to date, I spent nights working on this, I got to do my work in the daytime, and help keep NEA running a little bit. I went from 1956 to 1960 to show the activities.

Q. I notice in N-12, the first two items under the first category, King runs NEA attempted to take are Lima, Ohio News and Lewiston, Idaho Tribune?

2755 A. Yes.

Q. Those are the two we just talked about?

A. We did mention those, yes.

Q. Under the heading "2", NEA runs King attempted to take, I believe there are seven items listed?

A. Around seven, yes.

Q. On the next page of N-12—

A. There were more than seven. That is all I could find.

Q. —Item 3, King runs taken by NEA; which are those two?

A. Those are the Bloomington, Illinois Panagraph and the Gary, Indiana Post Tribune.

Q. Under Item 4, NEA runs taken by King, I see six items, including Rome, Georgia, that we have heard talk about here heretofore?

A. Yes, sir. We took that in 1956.

Q. King took it from you?

A. Yes, I meant King took it from us.

Q. I notice opposite the Springfield, Illinois State Journal and the Dubuque, Iowa Telegraph Herald there is a parenthesis, reciting that NEA attempted to retake, and giving a date; was that also reflected in your records?

A. Yes, it was certainly part of our records.

Q. Item 5 is headed "King runs taken by NEA and then retaken by King", and that lists Danville, Virginia,

2756 The Register?

A. That is the Danville, Virginia Register. We took that in 1962 and King took it back in 1965.

Q. Then in the sixth category, entitled "NEA runs taken by King and then retaken by NEA", there are two papers listed?

A. Right.

Q. What are they?

A. The Trenton, New Jersey Times which we took back, and the Sarasota, Florida Herald Tribune.

Q. The last item, number 7, "King runs taken by NEA then retaken by King then retaken by NEA", Key West, Florida is listed?

A. That is correct.

Q. And the date for that action was 1961, 1964 and 1965?

A. Yes.

Q. To the best of your knowledge, and from the records of NEA, is the tabulation set forth in Twelve accurate?

A. Yes, this is accurate, to the best of my knowledge.

Q. From your point of view as vice-president and business manager of NEA, how would you describe the competition presently existing between NEA and King Features for color comic supplement business?

A. It is rough and tough and it is never ending.

Q. That has been true for years?

2557 A. That has been true for years, that is for sure.

Q. Are you familiar with Exhibit P-33, dated March 29, 1957, from Mr. Whitehead, concerning the Jacksonville, Florida Times Union?

A. Yes, I am familiar with this.

Q. What was the background of that report, if you know?

A. Well, the Jacksonville, Florida Times Union, as I recall, was printing its own color comic sections. Mr. Whitehead was in there trying to convince them they ought to have a color comic supplement, the paper was too large for a readyprint. They had to carry their own makeready, they wanted the flexibility of being able to carry any advertising any place, anywhere, any features, make up their own sections in runs of 150,000, which was beyond the normal size run we are interested in. So he was in there trying to get this business for NEA.

Q. That is, that you were interested in as a readyprint?

A. That is right.

Q. What happened?

A. We were interested in this one as a color comic supplement, not as a readyprint. This was too big for a readyprint, too long a section.

Q. I take it there was an indication that Greater Buffalo was trying to bid directly on the business?

2758 A. That is right.

Q. And Mr. Whitehead was troubled by the fact that a project he had been working on might go to someone else?

A. Right, that is what did bother him, that he might lose the business.

Q. Who actually got the business for the Jacksonville, Florida Times Union?

A. It ended up that King Features actually got that business.

Q. So that this is an illustration in March of 1957 of competition among the three of you for a run which was going out of the newspaper plant itself to be printed outside?

A. Yes, that is right.

Q. And, at any rate, neither NEA nor Greater Buffalo got the business?

A. That is right.

Q. Are you also familiar with P-32, which is a letter, from Mr. Walter Koessler to you, dated December 5, 1956, concerning Albuquerque, New Mexico?

A. I am familiar with this letter.

Q. What happened with reference to the Albuquerque account?

A. This was never consummated. It stood where it was, Acme on the west coast.

2759 Q. Did NEA bid for the business?

A. Yes, we bid for the business.

Q. Did Greater Buffalo bid for the business?

A. Greater Buffalo bid for the business.

Q. And with both of you bidding it stayed where it had been for years, with Acme in San Bernardino, California?

A. That is right.

Q. Was what happened in Jacksonville, Florida or in Albuquerque, New Mexico the result of any agreement between NEA and Greater Buffalo?

A. No.

Q. As a matter of fact, to the contrary, it shows competition, doesn't it?

Mr. BERNSTEIN: I object.

The COURT: Overruled.

The WITNESS: Yes.

By Mr. STEVENS:

Q. Has NEA ever divided customers with Greater Buffalo, to your knowledge?

A. No, we haven't.

Q. Has it ever fixed prices on color comic supplements with Greater Buffalo?

A. No, we haven't.

Q. Turning to the language of the complaint; did
2760 NEA ever engage in a combination and conspiracy with Greater Buffalo, Hearst, Eastern Color Printing Company, and anyone else, in restraint of interstate trade and commerce, as charged in Paragraph 21 of the complaint?

A. No, we certainly did not.

Q. Did NEA ever enter into any agreement, understanding or concert of action with Greater Buffalo, Hearst, Eastern, and anyone else, to refrain from soliciting color comic supplement printing business from each other, as charged in Paragraph 22 (a) of the complaint?

A. No.

Q. Or to maintain and stabilize the price on color comic supplement printing in the United States, as charged in Paragraph 22(b) of the complaint?

A. No.

Q. Did NEA ever engage in a combination and conspiracy with Greater Buffalo, Hearst, Eastern or anyone else, to monopolize trade and commerce in color printing supplements, as charged in amended Paragraph 24 of the complaint?

A. No.

Q. Did NEA ever enter into any agreement, understanding or concert of action with Greater Buffalo, Hearst, Eastern or anyone else, to monopolize for Greater Buffalo the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendant, as alleged in Paragraph 25 of the complaint?

A. No.

Q. Now, what of the so-called Beverly truce with Hearst?

A. That is long gone. It was ten, eleven, twelve years ago. It was in effect, partially, for a very short time. It has gone under the dam for ten years.

Mr. STEVENS: We have no further questions. We would like to offer the remaining exhibit, which I believe is N-12.

Mr. BERNSTEIN: I would like to request that acceptance of that be deferred until after cross-examination. I would like to question the witness regarding the preparation of that exhibit.

The COURT: Is that satisfactory?

Mr. STEVENS: It certainly is. I might say we have brought the underlying data. We thought, with the length of the proceedings we have had, it would be easier to prepare this list and have it available. We do have a vast amount of underlying cards, etcetera.

2762 The COURT: Well, see what Mr. Bernstein gets into. Maybe you will still have to back to it. There are two papers I have here, gentlemen. One of them I have been looking at over several days is P-100 in evidence. You may want that in

connection with talking with Mr. Anderson. The other one is P-73 for identification. This is a letter of Driscoll's, an intra-office letter, to Mr. Nicht. I haven't passed on that yet. Do you want that now? Don't forget to bring it up to me again. The other one is in evidence?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Would you like to take lunch before you begin?

Mr. BERNSTEIN: I would prefer that, if it doesn't inconvenience you too much.

The COURT: Give me a view now—I know it's difficult—do you contemplate we can finish today or are we going to need tomorrow? The reason is that I have a distress case of a soldier here on furlough who has a tort case against the Government. If we cannot plan on trying his case because this one comes first, I am going to tell the lawyers to take his deposition today, if they will consent to that. I would like to know whether you think maybe we can get through. If you have any doubts, I would rather have you say that.

Mr. BERNSTEIN: I have some doubts but that is because of my experience before. That is the only reason. Otherwise I would think we could get through. What time did your Honor intend to resume at, one-thirty?

The COURT: I thought so.

Mr. BERNSTEIN: Could we go to five?

The COURT: Yes.

Mr. BERNSTEIN: I think—

The COURT: We will do the best we can. I will have to tell these people what I can about their case. We will come back at one-thirty.

2764 (Thereupon the Court was in recess at 12:30 P.M.)

2765 (Proceedings resumed, pursuant to recess, commencing at 1:30 P.M.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Anderson, in your testimony this morning, you stated that your recollection was refreshed somewhat by something that Mr. Koessler had testified to concerning the Beverly Hotel meeting, and I wish you would please try to recollect the events

of that time, and I would assist refreshing your recollection by referring to testimony that you have given to the Grand Jury on this subject some six years ago. Now, at that time you testified——

Mr. STEVENS: Now, I object. Are you saying you are impeaching this man's testimony?

Mr. BERNSTEIN: No, absolutely not.

The COURT: He said he wanted to refresh his recollection, I take it, with a view of perhaps having whatever happened enlarged beyond what Mr. Anderson now recalls.

Mr. BERNSTEIN: That is correct.

2766 Mr. STEVENS: Do you have a copy of what you are going to use?

Mr. BERNSTEIN: Certainly.

Mr. STEVENS: Why didn't you give it to me before?

Mr. BERNSTEIN: We may not have to get into it, the witness's recollection may be refreshed on the stand. Let's try it this way. There is nothing objectionable about this procedure, your Honor.

By Mr. BERNSTEIN:

Q. Mr. Anderson, you testified as to certain events that preceded the Beverly Hotel meeting. Now, I ask you whether this refreshes your recollection. Is it your present recollection that after the sale of Buffalo Color Press, late in 1955 or early 1956 you met with Mr. Koessler at Hotel Statler here in Buffalo, and at the Greater Buffalo plant here in Buffalo, and the primary purpose of those meetings was to get from Greater Buffalo a lower price, a price as low as King was receiving from International, do you recall that?

A. This had nothing to do with Beverly. When were these meetings? This was in connection with the sale of the assets of Buffalo Color Press.

2767 Q. I am talking about after the sale of Buffalo Color Press, late 1955 or 1956, is it your present recollection that you then knew that King was getting a better price than you from International on the smaller runs?

A. Yes, we felt that the formula that had been in effect at International for the pricing of color comic supplements on the short runs penalized NEA; that in the longer runs we were all right. If we could have a readyprint section with no changes, perhaps we were all right. On the smaller runs we felt

that King had a better price and we were seeing some prices they were making at various newspapers that we had a hard time to parse out. There seemed to be price-cutting as far as we could determine, a pricing structure at International that didn't quite make sense.

Q. You felt they were having a pricing advantage and able to cut your prices because they were getting a better price than you were getting from Greater Buffalo?

A. On the short run where page changes were required. That is what I tried to develop this morning. This is historically true.

Q. Let's develop it further——

Mr. STEVENS: What time is this?

2768

By Mr. BERNSTEIN:

Q. This is late '55 or early '56, this is after the sale of Buffalo Color Press. Does this refresh your recollection; that the contract that you had with Greater Buffalo, that resulted from the sale of Buffalo Color Press, provided that NEA was to get as low a price as Greater Buffalo charges any other customer, is that correct?

A. This was right, it applied to Greater Buffalo Press, the price at Dunkirk or whatever plants they would buy, but it didn't apply to International Color Printing, which was a separate corporation.

Q. Perhaps it would be best to read your testimony. Would you please turn to page 750 of your——page 748 of your testimony before the Grand Jury, line 20. Reference was made in the question to the sale of——maybe we better go back earlier than that——let's take page 747, line 18. You were asked this question: "At the same time didn't it occur to you that Greater Buffalo Press would not want its two sales agencies, namely, the two syndicates, fighting over accounts which he already has and is servicing from either Buffalo or Lufkin or even potentially Sylacauga?" What was your answer?

Mr. STEVENS: I object. What is the purpose of this?

2769

Mr. BERNSTEIN: This is to refresh the witness's recollection as to the events that occurred in 1955 and 1956, and as he testified under oath in 1960.

Mr. STEVENS: Well, I think the proper way to do it is to read what it is and ask him if that refreshes his recollection; not

to have him read now as though it is his present answer to that question.

By Mr. BERNSTEIN:

Q. My question was, what was your answer then?

A. Mr. Bernstein, I have got—I can't place this question. What time are you referring to here?

Q. The question I read was at page 747, line 18, your answer was on page 748, line 1.

A. What meeting was this that you are referring to?

Q. Well——

A. I am trying to help but——

Q. All right, let's try it another way. On page 747 you are asked this question, line 10: "Wasn't it obvious to you that at the time that Greater Buffalo Press wanted both plants, namely, International and Buffalo Color Press——" —this is referring to Greater Buffalo's purchase of International—— "—— so that he could get more business, namely, be able to make and sell to you people more of the comic supplements?" Your answer was: "Sure, he wanted the printing that was in our plants."

A. That is what we sold to him.

Q. You were asked this question: "At the same time didn't it occur to you that Greater Buffalo Press will not want his two sales agencies, namely, the two syndicates, fighting over accounts which he already has and is servicing from either Buffalo or Lufkin or even potentially Sylacauga?" What was your answer?

Mr. MOORE: I object at this time, if this is being taken against Greater Buffalo. He is asking him a question, what occurred to him, how can that be binding on us?

The COURT: Now, the only point, as I understand it, that Mr. Bernstein is making is that there were meetings, a meeting at least, and he feels that Mr. Anderson at another time gave more details about such a meeting than he now recalls. I take it this is just to jog his memory.

2771 Mr. BERNSTEIN: That is correct.

The COURT: And see whether indeed he then recalled more details.

Mr. BERNSTEIN: That is correct.

The COURT: This is not received as his mental operation as to any intent of yours, unless he can quote from things your principal said or did.

Mr. MOORE: My point is, your Honor, if the detail he is trying to refresh him on involves a question of what occurred to him, I think—

The COURT: We have no jury. Supposing we hear Mr. Bernstein out in his efforts to do one thing, as I understand it, to get the full picture from Mr. Anderson, who now, Mr. Bernstein thinks, has forgotten some points.

Mr. BERNSTEIN: That is correct.

The COURT: We will hear it all. I will be glad to entertain your motion to strike if you think it serves another purpose.

Mr. MOORE: Very well.

Mr. STEVENS: It sounds find. I would suggest
2772 that in the two questions from page 747 which Mr. Bernstein read there is a reference to time, at the time and at the same time. What time is it?

The COURT: Let me make a further suggestion. Of course, it is cross-examination, and normally we are probing when we cross-examine, for something that your are anxious to bring out. Why don't you tell Mr. Anderson what it is that you are driving at, then refresh him, and I am sure that if he recalls it he will say so.

By Mr. BERNSTEIN:

Q. This is what I represent, this is what I conclude your testimony was before the Grand Jury, and we will test this out (later on, but for the purpose, I represent you testified to the Grand Jury under oath that after the sale of Buffalo Color Press, in late 1955 or early 1956 you met with Mr. Koessler at the Hotel Statler, and also on other occasions at his Greater Buffalo plant, and the purpose of the meeting was primarily to get a lower price from Greater Buffalo, the same
2773 price as you were having—that King was enjoying from International on the smaller runs, and you believed you stood to lose a lot of business through Kings's extremely low quotations, and your contract with Greater Buffalo provided that Greater Buffalo was to charge you as low as anyone else, and you knew Greater Buffalo had bought the International plant. Now, Mr. Koessler told you that he inherited the contract with King from International when he took over the plant, so that he and you both mutually recognized the desirability of prevailing upon King not to come in and take NEA accounts away, and Mr. Koessler later told you—this was before the Beverly Hotel meeting, that he had spoken

to Nicht about it, and that Nicht had assured Koessler that King would not come in and take NEA accounts, and that in late 1955 or early 1956 you met at the Beverly Hotel, and that meeting was arranged by Mr. Koessler, and you said that the purpose of the meeting was to agree that NEA would not take the runs currently printed by King Features service and that King Features service wouldn't take the runs currently printed by NEA service, and you left the meeting believing that King would not solicit any accounts serviced by

NEA, and Nicht expressed a willingness to do it, and you
2774 told Nicht it would not solicit his accounts, and Mr. Koessler indicated that he was in favor of this. Now, that is—let's look at your testimony—does that refresh your recollection?

A. Maybe you can develop this out of it. I have no recollection of these meetings you talk about at the Statler or Greater Buffalo, outside of the meeting that we had when we were selling Buffalo Color Press.

Q. You have no present recollection of those meetings?

A. Of those. I am sure we talked to Mr. Koessler about it. Mr. Koessler, of course, felt in some instances we had an advantage on the longer runs, that if we could make makeready without too many page changes that this also——

Q. Do you recall talking to Mr. Koessler—before the Beverly Hotel meeting do you recall talking to Mr. Koessler and Mr. Koessler telling you that he spoke to Mr. Nicht and that Mr. Nicht gave him the assurance he would not take your accounts?

A. No, I don't recall that. Mr. Walker, of course, was in this picture also.

Q. I am talking about you.

A. No. What I recall is that Walter Koessler did arrange for us to meet with Mr. Nicht.

Q. You do recall that it was a short meeting, that is
2775 what you testified here? I am trying to——

A. Yes, I understand.

Q. I am trying to ascertain whether the reason it was short was because you had learned from Mr. Koessler before that this is the way it was going to work out, this was just a confirmation by Nicht of what you believe had already been agreed upon?

A. I don't know what Mr. Walker felt—I know——

Q. Let's look at your testimony, let's look at page 750. You

talk about the discussions in Buffalo at the Statler, and the only reason I went back to——

A. Weren't those in connection with the sale of Buffalo Color Press?

Q. Let's look at page 749. On page 749 the time is fixed in late 1955 or early 1956. The sale of Buffalo Color Press was not in early 1956, that was in late 1955, is that correct, it was October 1955?

A. Yes.

Q. Let's look——

Mr. STEVENS: On that point, your Honor, P-27 shows specifically that although the contract for the sale of the assets of Buffalo Color Press was executed in late October of 1955, it became effective, as I recall, on or about January 11, 1956.

By Mr. BERNSTEIN:

Q. Let's go back——

A. I had a—we had supplies to sell, determine what they were, what the newsprint situation was, and these were in connection with the sale.

Q. Let's go back to page 748. On page 748 there's questions concerning NEA's soliciting King's account and King not soliciting NEA's account. Let's go back to page 747 to see if we can fix the time, and so we get back to the first question that led to these series of questions, and the first series of questions that led up to this is the sale or the purchase by Greater Buffalo of International, that is on page 746—no, that is the sale of Buffalo Color Press to Greater Buffalo. Look at line 6. The question was put to you: "Let me put this to you. In effect then, by selling Buffalo Color Press to Greater Buffalo didn't you then have a situation where you had one supplier with two key types of salesmen, namely, NEA and King, selling his products throughout the country?" Then you answered: "Well, they also sell directly, of course, and there are other plants around the country." And then the question: "That is right. Basically what he acquired would be two acquisitions, two key sales syndicate organizations, is that correct?" And then the answer: "That is right." Then the question: "And these were the two formidable syndicate organizations in the country in regard to the sale of color comic supplements?" Then the answer: "Yes, that's right."

A. That's right. I wish I was as formidable as it reads there.

Q. "Carrying this a step further, didn't it seem to you and, perhaps, Mr. Walker at the time that Mr. Koessler or Greater Buffalo Press wished the two sales syndicates to promote, at all costs, the sales of the color comic supplements which Greater Buffalo Press would be making?" Your answer is: "No, there were other plants in the country. We did see that he was growing bigger certainly, that he was getting lots of the supplements. There were still other printers left, but he was getting large, we saw this." Is that correct, is that answer correct?

A. It would seem so.

Q. You were asked this question——

A. I don't understand, I thought you were putting me in the framework of time here.

Mr. BERNSTEIN: I'll withdraw the question and
2778 move that the answer be stricken.

Mr. MOORE: I move the question be stricken and the reading of it. He isn't doing what he said he would do.

Mr. BERNSTEIN: We are trying to refresh the witness's recollection.

Mr. STEVENS: You have no right to ask him then "Is that correct".

Mr. BERNSTEIN: I withdraw the question and move it be stricken.

The WITNESS: What do you want me to recall? You made a wrong statement there.

By Mr. BERNSTEIN:

Q. I am trying to have you recall that before the Beverly Hotel meeting you had a discussion with Mr. Koessler, and Mr. Koessler told you that—and that discussion was about price—and Mr. Koessler told you that he could not reduce your price at Greater Buffalo Press, and that he inherited the contract between International and King, so that is implying he could not consider King's price and, so therefore, the way to resolve the problem was to have King agree not to solicit NEA's accounts, do you recall that?

A. This is a further development you put on it. I have
2779 no question, I tried to make it clear, we were constantly in discussion with Greater Buffalo Press about the pricing of readyprint color comic supplements. They were our contractor, we were contracting our printing, and we wanted to get our price as low as we could. We saw we were starting to lose

out, and this is the reason we were looking for breathing time to get out—find out what was going on in the printing business.

Q. This discussion was after the sale of Buffalo Color Press and before the Beverly Hotel meeting?

A. This discussion went on from the time it was—from October in a course until the plant was finally delivered, the business was finally delivered to them early in 1956. As a matter of fact, it still goes on. We are not any God's children to printers, we try to get as low a rate as we can.

Q. So the simple answer is that it was before the Beverly Hotel meeting?

A. What was?

Q. Those discussions?

A. As to the pricing of the—yes, I am sure they went on before.

Q. Let's focus on that. Now, do you recall Mr. Koessler said to you—in those discussions you were also talking to Mr. Koessler about the price that King was paying International, do you recall that?

A. We always talked about the price King was paying International.

Q. Do you recall that Mr. Koessler told you—this is very important—that Mr. Koessler told you that he had spoken to Nicht about this, and Nicht said that he—he assured him that he would not solicit the NEA accounts, do you recall that?

A. No, I do not.

Q. That's what I want to refresh your recollection about by your testimony before the Grand Jury.

A. Good, good. In my mind, when Mr. Walker was there at the Beverly we didn't know what Mr. Nicht would think about this. As a matter of fact, I think I testified that as he left he said something to the effect, "If I don't call you—" —he went out the door, he said, "If I don't call you back, maybe this will work" or something to that effect. We didn't know previously to the Beverly that Mr. Nicht was going to go along with any such arrangement. I think I can find it in the Grand Jury testimony—I think—if I didn't testify to that, I should have.

Q. Let's read the questions and answers from page 748 to page 752 and see if that refreshes your recollection:

2781 "What, if anything—"

A. What page?

Q. Page 748, line 2.

Mr. STEVENS: You are not going to stop and ask him?

Mr. BERNSTEIN: I will read continuously from page 748 to page 752, with the Court's permission.

Mr. MOORE: Why doesn't the witness read it? You are trying to refresh his recollection.

The COURT: If there is an objection to that reading, why don't you have him read his own testimony and ask him if it refreshes him. If he says no, you can say, "Doesn't this item refresh you in any way?"

By Mr. BERNSTEIN:

Q. Will you read, please, the transcript, page 748 to page 752 to yourself?

A. The whole transcript from page 748—

Q. To 752.

The COURT: Then in the light of what you said this morning you evaluate whether that leads you to some further understanding and recall, and if it does say what it leads you to, if it doesn't, say so.

The WITNESS: All right. I have to go back further.

Br. BERNSTEIN: Surely.

The WITNESS: "What, if anything, was said?" Was that what was said at Beverly, is that what the question is here?

By Mr. BERNSTEIN:

Q. I suggest, Mr. Anderson, you read from page 748 to 752 and then, if necessary, go back to 746 or whatever else you need. I think it will clear up as you go along.

A. (Witness examines transcript.)

Q. Will you please read up to 753, line 4?

A. (Witness examines transcript.)

Q. Then if you have done that, skip to 775—excuse me—

A. 775?

Q. No. 774, line 13.

A. The pages aren't marked very clearly. 774?

Q. Line 13.

A. (Witness examines transcript.)

2783 Q. All right? Now read 775 to yourself.

A. (Witness examines transcript.)

Q. Read 776, please?

A. (Witness examines transcript.)

Q. You have read 776, how about 777?

A. I haven't read that yet.

Q. Particularly line 7 and the answer at line 11.

A. (Witness examines transcript.)

Q. Now, does it refresh your recollection—I am trying to find out, does it refresh your recollection? The only way it can, Mr. Anderson, is if you think back to those days. You have to do that, that is difficult.

A. It is. I will try.

Q. Thinking back to that period of time; do you recall now that you did have discussions with Mr. Koessler before this meeting at the Hotel Beverly concerning Nicht's willingness not to solicit your accounts?

A. No, I don't recall. I recall a lot of talks with Mr. Koessler in connection with the sale of Buffalo Color Press. I recall, of course, complaining about the sharpshooting price cutting that was going on. I don't recall, I'm sorry, how it came about that Mr. Koessler was going to introduce us to Mr. Nicht.

Q. You don't recall?

A. I recall the purpose of the meeting was to see
2784 whether Nicht—whether we were going to stop this price cutting.

Q. It was clear after that meeting that you were going to do that, you left the meeting with that understanding?

A. I think, as I testified to the Grand Jury, that we thought we had something for a while. But—I think I said it to the Grand Jury—Mr. Nicht went out the door and he said, "We will see." Since he didn't come back, we assumed that maybe he was agreeing to it.

Q. Which part of your testimony are you referring to? Read the portion. Let's look at 776, line 22—excuse me—line 22, 775. Is that what you are referring to?

A. Yes, sir, that is what I refer to.

Q. What is it that you left the meeting with, what understanding?

A. Do you want me to read from what I said then?

Q. Is that an accurate statement of it?

Mr. STEVENS: I object.

The WITNESS: I said I didn't recall the exact words.

Mr. BERNSTEIN: Is that an accurate statement?

Mr. STEVENS: I object.

2785 The WITNESS: Let me see.

The COURT: I am frankly not following you, Mr. Bernstein. Did you want him to endorse what he said, as to a full answer?

Mr. BERNSTEIN: I want to ascertain whether the witness is now stating under oath on the stand what he testified to in the Grand Jury at that time is now his statement, the correct statement of the understanding that he left the meeting with

The COURT: Or if there is more?

Mr. BERNSTEIN: Or if there is more.

The WITNESS: Well, this particular answer that he is asking me about——

By Mr. BERNSTEIN:

Q. What was your answer?

A. You're on page 776, line 20?

Q. Take 775, line 22.

A. 775, line 22.

The COURT: I will tell you what I think our trouble 2786 is, Mr. Bernstein, I am listening carefully, you are hopping back and forth, you see. I think you should fix your mind on one part that you want to explore and let him focus on that, if you can, because, candidly, I know you are standing there thinking, but you have made numerous changes in what you are asking the man to read. I don't follow it and I think he is having trouble. Now, let's see if we can't get along.

The WITNESS: If my counsel has no objection, I will read my answer on page 776.

By Mr. BERNSTEIN:

Q. Read the question first so that we have the full thing.

A. "Any question about it or any qualification you would like to offer? I am talking about that meeting." Now, here we are talking about the Beverly meeting.

Q. Your answer—you were asked on 775——

A. I said yes. You asked me whether I wanted to qualify it and my answer is, "Yes. I would like to say it was a very short meeting and I can't recall the exact words that were 2787 used. But we—I don't know exactly what Nicht said—we had the feeling——" —that is Mr. Walker and I—"—we had the feeling that this would be trite, there was no length of time on it or anything like that."

Q. Then you were asked the question: "You left the meeting initially with the understanding that it would commence to operate immediately?", and you said, "That is right."

Mr. STEVENS: I object to that.

Mr. BERNSTEIN: Is that correct?

Mr. STEVENS: I object to that.

The WITNESS: Well—

The COURT: Just a moment, Mr. Anderson. I don't wonder you are, let us say, confused. You have an objection from your lawyer, we have to pass on it. What he is doing is either agreeing that is the answer he gave today, as he had before, or he has something more.

Mr. STEVENS: My objection is that, in fact, what Mr. Anderson has read is in answer to a question put to him in the Grand

Jury and is precisely what he testified today, and this
2788 reading of a question and answer and saying, "Did you say that?", is not refreshing his recollection on anything.

The COURT: It doesn't hurt. What Mr. Bernstein is really getting at, as I understand it, is that when you and Koessler were talking, prior to the Beverly thing, there was some understanding that he would see Nicht and get him pinned down that he would not try to clip your customers away from you. When you finally met Nicht in Beverly there was practically a code almost, "Okay?" "Okay.", and that was an endorsement of a large contract not to compete with each other for each other's clients.

Mr. BERNSTEIN: That is correct.

The WITNESS: If that is what Mr. Bernstein is trying to show, then that is not correct. When we went to the

Beverly—not correct, your interpretation is not correct—
2789 when we went to Beverly, as far as I'm concerned and

I believe as far as Mr. Walker is concerned, we didn't know we had an agreement with Nicht. But as my Grand Jury testimony shows, when we left we were not sure, we thought we did. If this was all cut and dried, like you are attempting to show, the agreement would have been had I would have said yes, but I didn't. If I could be more helpful I would.

By Mr. BERNSTEIN:

Q. Your statement now is pretty positive—

A. I have lived with this thing for seven years, I have tried to cast my mind back. The only thing that comes to my mind was the thing that Mr. Koessler brought up at this trial, that there was another man in the room, which I do recall as being correct. I think he was a friend of Mr. Walker's. Try as I can, I have no recollection, I can't establish who the man was.

Q. Okay, that is understandable, we all have that
2790 trouble. I am trying to ascertain, so that there is no
12 doubt in the Court's mind as to what occurred, as to

whether or not when you testified before the Grand Jury you were telling the truth then, there is no doubt that you were telling the truth under oath when you testified before the Grand Jury?

A. No doubt in my mind. I think you are mixing up Beverly with some earlier meetings. There was no doubt I tried to tell the truth.

Mr. BERNSTEIN: I submit, your Honor, the only way to prevent the mixup is to permit me to read the questions and his answers to see whether I am mixing up the two. I submit that on page 750——

Mr. STEVENS: His question should be, "Is there anything on page 750 of the transcript of the Grand Jury which refreshes your recollection as to whether or not there was, in fact, an agreement substantially concluded before the Beverly meeting."

By Mr. BERNSTEIN:

Q. I am asking you this question, Mr. Anderson——

2791 The COURT: Wait a minute. Now, I appreciate—I think you are right, that is the proper procedure, but in the nature of things, gentlemen, if we are ever going to finish we may have to change the rules a little. I am not a jury here, I trust I am not one who is regarded as having been born yesterday. Let me hear it, and you can argue with me about the propriety of it and the prohibitive force of it, and you can be sure I will listen carefully. But we will never get ahead if we don't stop the exchange here. All right.

The WITNESS: The questions on page 750 have nothing to do with Beverly. They don't refresh my memory about anything that went on at Beverly.

By Mr. BERNSTEIN:

Q. All right. On page 749, line 2, you were asked this question.

2792 "Q. When did these discussions take place in regard to not infringing upon King's territory and they not infringing upon NEA?"

A. That was probably late in 1955 or very early in 1956." Now on page 750:

"Q. Where did such discussion take place?"

A. Here in Buffalo.

Q. Where in Buffalo?

A. At the Statler.

Q. Where was the first meeting in that connection?

A. This I don't recall. There were a lot of business we talked about. I don't recall when the problem was brought up in a formal meeting.

Q. You do recall there was a formal meeting devoted to that problem?

A. There wasn't a formal meeting devoted to this problem. All of the problems were on the floor. This was one of the important problems.

Q. These meetings were held at the Statler?

A. We met at the Statler and I think we were out at Greater Buffalo Press.

Q. Going back now, and trying to recall those meetings whereby you say an agreement was reached——

A. It might have been done on the phone.

Q. Referring to the meetings; who can you recall was 2793 present at such meetings?

A. Well, it would be Walter Koessler and myself. I am sure Herbert Walker had a part in this, I don't know.

Q. Are you sure he knew about the actual agreement being made?

A. Yes, sir.

Q. Anyone else that you can think of, was Mr. Borglund there?

A. No, from our company would be only myself and Mr. Walker.

Q. Now, did you want some assurance from Koessler that King in turn would not come in and seek your established accounts?

A. Yes. Primarily, at first, at lower price than we could print for.

Q. Did you get any assurance from Koessler in that regard?

A. Finally it developed, we were told that in buying this plant that he had also taken over a contract that International Color Printing had with King Features that extended, we understood, for about five years, and set the basis on which sections would be priced for King.

Q. But, at any rate, did you attempt to solicit an agreement from Koessler that he would prevail upon King in turn 2794 not to come in and take your accounts, whether it be on the lower price level or any other service?

A. Yes, we did. Now, which way the soliciting went, this was a mutual thing, I wouldn't like to say that NEA did soliciting

any more than Buffalo Press did, I think it was a mutual problem.

Q. At any rate, did there come a time that Koessler assured you people that King would not solicit your established accounts?

A. Yes, they did.

Q. In giving you that assurance did he tell you people that he had spoken to people over at King in that regard?

A. Yes, he did.

Q. Do you recall whom he said he spoke with at King before you were given the assurance?

A. Mr. Nicht.

Q. Do you recall when he said that? Can you recall the particular meeting?

A. No, I can't.

Q. That would be in the period of late 1955 or early 1956?

A. That is right, no later.

2795 Q. Are you sure it was in that period?

A. I am sure it was in that period, it was no later than that period."

The next questions go on to the sale of Buffalo Color Press and the price, and those questions continue on another subject until we come—

Mr. STEVENS: Do you have a question for the witness?

Mr. BERNSTEIN: Yes.

By Mr. BERNSTEIN:

Q. My question is; are any of these answers that you made under oath—were they true at the time you made them?

A. They are true in the context which I gave them. These meetings held at the Statler, and so on, which Mr. Borglund did not participate in, and so on, those were concerned with the sale of Buffalo Color Press to Greater Buffalo and the problems attendant thereon. Certainly one of the problems that came up was the pricing structure we had as compared to the pricing structure—you are trying to show all the time we were talking about the Beverly truce and it is not true.

Q. No, no, I am trying to show these conversations were before the Beverly truce meeting. All of the questions—

A. Yes, they were.

Q. Is that correct?

A. All of the—they were not devoted to the Beverly truce.

Q. They were before the Beverly truce meeting?

A. We had discussion about pricing after the Beverly truce, they have continued to this time.

The COURT: What he is trying to say, in the parlance of the street, is that before Beverly you had a deal worked out wherein King and you would not try to exploit each other's customers, that they even came Beverly—

The WITNESS: I understand.

The COURT: That is what he wants you to say, when you testified about the Statler with Koessler, that that resulted in your understanding of a deal.

The WITNESS: Statler meetings were not involved with Beverly, they were involved with the selling of Buffalo Color Press. I did testify we had an agreement with Nicht before we went down. This is certainly not my present recollection.

By Mr. BERNSTEIN:

Q. At the time that you said that you believed it was true, at the time that you said that?

A. Anything that I said in here, given the proper interpretation, was certainly the truth. I was trying to be helpful to the Court, I was testifying to the truth. Maybe you led me on, I was trying to do my best.

Q. Now, inviting your attention to—I represent that between page 752 and 775 there is no more discussion on the same subject or the Beverly Hotel meeting—

A. I don't know, I haven't looked.

Q. I represent that. I will state under oath that is the case and if we took the time to read it we would see that. On page 774 you were asked this question:

Q. After the actual sale was consummated, do you recall meeting with Nicht in New York City?—Now we are not talking about the Statler or Buffalo, or anything else, we are talking about New York, and you say:

2798 "A. Yes, sir.

"Q. At some hotel?

"A. Yes, I do.

"A. Where did that take place?

"Q. At the Beverly Hotel.

"A. Who called that meeting?

be a meeting. That I don't know. I think it was mutual there would be a meeting.

"Q. Who was present at the meeting?

"A. There was myself, Mr. Walker, Walter Koessler and Mr. Nicht.

"Q. Did that meeting take place in the latter part of 1955?

"A. I had been trying to recall, I'm not sure whether it was the latter part of 1955 or the early part of 1956.

"Q. Whose suite was it in at the Hotel Beverly?

"A. NEA service.

Q. That would be Mr. Walker's suite, or did it belong to the service?

"A. At that time it was—I'm not sure whether it was his suite or NEA had a suite. At one time he had a suite at the Beverly."

Mr. MOORE: If the Court please, this is just what has been testified to. Why are we being treated to a reading?

2799 The COURT: I am trying to understand. I thought in the nature of things Mr. Anderson had said everything that he had said in the Grand Jury. Now, you think there is some departure and you are trying to bring it out. Go ahead.

By Mr. BERNSTEIN:

Q. "Q. What was the purpose of that meeting?

"A. The purpose of the meeting was to agree that NEA Service would not take runs currently printed by King Features Service and that King Features Service would not take runs currently printed by NEA Service.

"Q. Did you leave that meeting knowing or thinking that thereafter King would not solicit accounts serviced by NEA?

"A. Yes, I thought that would be the agreement. I didn't know if it would work. Yes, I thought that would be the agreement.

"Q. Did Nicht, during the course of that meeting, indicate a willingness to go along with that idea?

"A. We thought so, yes.

"Q. In other words, he so indicated to the group there?

"A. We thought so, yes.

2800 "Q. Mr. Walker and you, on behalf of NEA, told him or indicated to him that you would not solicit accounts he then had?

"A. That is right.

"Q. Would you say that this was the oral understanding or agreement you came to at that meeting?

"A. Yes.

"Q. Any question about it or is there any qualification you would like to offer?"

I am talking about that meeting, and your answer was:

"A. Yes, I would like to say it was a very short meeting. I can't recall the exact words that were used. We were—I don't know exactly what Nicht said. We had the feeling this would be tried. There was no length of time or anything like that.

"Q. You left the meeting initially with the understanding that it would commence to operate immediately?

"A. That is right.

"Q. Did Mr. Koessler, during the course of that meeting, urge this agreement to be accepted by both sides, did he indicate he was in favor of it?

"A. Yes, he did.

"Q. Did Mr. Nicht have to be coaxed into giving his assent to such agreement?

2801 "A. No, I don't think he was coaxed.

"Q. Did he want such assurance from you people?

"A. That was the basis of it, yes.

"Q. Did he indicate that he was anxious to get such assurance from you people?

"A. I don't remember the exact words, I think that was the idea.

"Q. Generally?

"A. Yes.

"Q. No question in your mind that such an understanding was agreed upon at that time?

"A. That is right, there is no question."

Now, Mr. Anderson, my question to you now is; were the answers you made under oath at that time the truth?

Mr. STEVENS: I object to that.

The COURT: Overruled. He said they were the truth. You also said in the context that you were reciting they are the truth, is that correct?

The WITNESS: These are the right answers. I don't agree with the implication Mr. Bernstein may want to put on some of them.

2802 Mr. MOORE: Now, just a minute, I am going to object.

The WITNESS: I would further qualify it—

Mr. MOORE: Please. I am objecting to the receipt—evidently this is some way he puts things in evidence, a new technique unknown to the common law so far—if this is going in evidence.

I am going to object to the receipt in evidence of statements, if they are going in, of somebody testifying about what somebody indicated. I mean, this is conclusive.

The COURT: I understand that. It occurred to me, as recited there, that Mr. Koessler's words are not attempted to be quoted, that "Did Koessler go along with this or did he solicit it?" "Yes." That would not be competent evidence and I do not receive it as such. I appreciate that this gentleman was in the Grand Jury without counsel. In fact, I noticed another thing, he said
2803 it in there, "Thereby he, Koessler, acquired two key sales organizations", which you meant was NEA and King. I never had the concept that Koessler ever captured either one of those outfits that day. He said that is true. Mr. Moore, I am listening to this, I am accepting in the vein as a lawyer would, of what is being recited. Ultimately I am not interested in what has been said here, this is not technical, legal proof, except to confound a witness or to refresh his recollection. This gentleman has persisted that the truth lies in those statements that he made under oath then, that under the circumstances as they then existed they did not mean what Mr. Bernstein would like them to mean. We will have to get along sometime. I understand about how you feel about it, if I were sitting here taking these conclusions as facts, I don't wonder you get
2804 upset about it, but I am not. I don't know today what Koessler said in that room beyond, 'This is Nicht and this is Anderson, gentlemen, shake hands.' That is all I know, or something like that.

By Mr. BERNSTEIN:

Q. I am trying to ascertain, Mr. Anderson, whether or not it is—do you categorically state under oath that you have a clear recollection of the events and you clearly deny that prior to the Beverly meeting Mr. Koessler told you that he spoke with Nicht and Nicht gave him the assurance that he would not take away NEA's accounts?

A. I certainly do not testify that I have a clear recollection of what went on back in 1956. That is eleven years ago, half of my working life. I don't testify that I have a clear recollection. I do testify that I am trying to recall to the best of my ability.

Q. Attempting to recollect to the best of your ability, you recollect that you were at a meeting with Mr. Koessler concerning the sale of Buffalo Color Press in the Statler

Hotel, is that correct, do you recall that? Do you have a present recollection?

2805 A. We had a meeting at the Statler Hotel early in the summer of 1955 to talk about—we discussed the sale of Buffalo Color Press to Greater Buffalo. All the details—not all the details were worked out on this session. This was a previous discussion which led up to the meeting where we got down to cases on the sale.

Q. My question is; do you now recollect whether at that meeting in the Statler you discussed with Mr. Koessler the price that King was getting from International?

A. No, I don't recall. But in the natural course of events, when we got together with our supplier, this would come up.

Q. You don't have a present recollection of that?

A. No. As a matter of fact, I was wrong in this when I said that Mr. Herman was at this meeting, Leon Herman. I left him out in the earlier testimony. He is now dead.

Q. Now, after the meeting at the Hotel Statler, was there another meeting with Mr. Koessler at the Hotel Statler before all of the details of the Buffalo Color Press transaction were resolved?

A. This is what I don't recall. We had meetings over at Greater Buffalo Press. I don't recall any additional meetings at the Statler. There may have been. I don't see, with a
2806 quick perusal of the Grand Jury testimony—maybe it's here, I don't see it.

Q. What?

A. We had meetings, no question about it, but where they were I don't recall.

Q. Do you recall the meeting at which the final details about the sale and the price that Greater Buffalo was to charge NEA, all of those details, where that was held?

A. No, I don't recall. This was a developing negotiation on the sale of the assets of Buffalo Color Press. We had to arrive at a mutually satisfactory sales price. I don't recall, but I would think sometime in early summer in the meetings we were coming down to the nub of what we thought we should have if we sold Buffalo Color Press.

Q. Well, where were the discussions taking place?

A. Some were on the phone, some were—as I say, one of them at least was at the Statler; we had a meeting, I know, at Greater Buffalo Press.

Q. Now, is it your present recollection that during the course of negotiations, and before the sale actually took place, you were talking to Mr. Koessler about the price that King was paying International?

A. Before the sale actually took place on October 23rd, 2807 yes, because on August 1st we learned—or August 2nd, in that area—we learned that Koessler had bought International Color Printing and, of course, we—as soon as we could get together with him, we asked him that question. The pricing came up, naturally.

Q. What did he tell you?

A. I don't know whether it was early, but somewhere along the line we got the definite impression—I would assume he told us or somebody told us—that they had inherited the contract that International, had with King Features. Now——

Q. What was the——

A. We had the impression this was a short-term contract. I don't know, long-term or short-term.

Q. Did that mean to you at that time that he was saying he could not raise King's price?

Mr. MOORE: I object to what it meant to him.

The COURT: Sustained. Mr. Anderson, you can understand that would be a conclusion. Now, there was some talk that he had been pinned by a contract formerly made that he had to honor?

The WITNESS: That is right.

The COURT: And he told you that he was going to have to honor it?

2808 The WITNESS: Yes. We didn't know the details of the contract that King had with International. As I said, we knew the basic formula. We didn't know—I didn't know, at least, until it came out in court or until the papers went in what the contract actually is or was.

By Mr. BERNSTEIN:

Q. Did Mr. Koessler tell you at that time that he could not give you a lower price to meet King's price, to meet International's price to King?

A. Mr. Koessler told us that he had inherited this contract. When he bought International he had inherited the King contract. He also defended the case, that actually overall his printing prices in Greater Buffalo were lower, we don't quarrel with that, we quarrel with the way prices were arrived at so that our

smaller runs left us at a disadvantage with King. This was our concern, was King going to have now the know-how of Greater Buffalo transferred down to the International plant. We hoped all along the line that International was in trouble.

Q. Do you now recollect while these discussions were going on, and this was between August of 1955 and October of 1955 when you finally agreed on the price that you would pay Greater Buffalo, is that correct?

A. Well, I am sure—I am sure that the price that—would you restate the question?

Q. Yes. During what period of time, from August to October of 1955, was the price that NEA was going to pay Greater Buffalo for printing—when was that arrived at?

A. That I don't know. I know it was arrived at certainly before October 23rd, because all these papers had been handled by the lawyers, and so forth. I don't know when between early summer and October 23rd, when we finally got what we wanted from Koessler.

Q. It is fair to say, is it correct to say, that you accepted Greater Buffalo's price knowing that International was charging King a lower price on shorter runs because Mr. Koessler inherited that contract?

A. No.

Q. Why not?

A. Our price at Greater Buffalo—the price NEA paid for printing at Greater Buffalo Press was based upon the price structure that Greater Buffalo Press offered every other newspaper in the country. They had one set of prices, and we started from that. Understand, Mr. Bernstein, we had runs in Greater Buffalo prior to the sale. We were already—they were already our contractors for printing. We paid exactly the same price for printing that we had paid previously for runs in the plant. Then the question is; what payment will Greater Buffalo Press make to us for buying this going business, and this—so there was no discussion. I hate to belabor it, there was no discussion about the pricing structure, the only discussion was about the payment Greater Buffalo would make for the plant, and how we could handle the return of capital and—

Q. Which payment are you talking about? Are you talking about the \$25,000 for the machinery and the inventory or are

you talking about the price that NEA would receive for each one of the scheduled newspapers or both?

A. We were talking about both of them, sure.

Q. Nowhere in this discussion was there any talk about the price that Greater Buffalo was going to charge NEA for printing for the newspapers, that was understood, correct, to continue the price that Greater Buffalo had been charging NEA before?

A. Yes, Greater Buffalo's basic price structure stood.

Q. And that price was the price that it charged to
2811 newspapers when it sold newspapers direct, is that correct?

A. Correct.

Q. Was there any—did Greater Buffalo have an distinction—

A. Except here again, I probably should qualify, we were putting together makeready, readyprinted color comic supplements, and we had the advantage over separate newspapers, spreading these makeready costs over a great many newspapers, lowering the cost to the newspapers and being able to call for a lower price to the smaller newspapers.

Q. Was his makeready price to NEA any different than the makeready price to another newspaper?

A. No, the price was the same, except that once we bought this makeready, we, as sales agents, could go out and sell that makeready to other newspapers along the line.

Q. Was that price the same that Greater Buffalo charged other syndicates?

A. I assume so. I don't know so.

Q. Now, what were you attempting to do during the course of those negotiations in mentioning to Koessler the more favorable price that King was getting at International'?

2812 Mr. MOORE: I don't like to interrupt, but may I have a continuing objection to the conclusory nature of these questions, what he was attempting to do.

The COURT: You understood International was printing things for King at a lesser rate than you could get in Buffalo?

The WITNESS: For the smaller papers, we understood that.

The COURT: You were upset and you were talking to Koessler about it?

The WITNESS: Yes.

The COURT: Will you tell us what you told him or asked him, or whatever?

The WITNESS: We had no proposal on the printing of the sections, except to make it as easy as possible for us to build these makereadys. I have no quarrel with the basic way they approached the price. The basic way International approached the pricing was wrong and led to the distress of International and their finally having to do something about it.

2813 By Mr. BERNSTEIN:

Q. Did you say anything to Mr. Koessler in an effort to get him to change the International pricing structure to King?

A. You mean after he bought——

Q. Between August and October of 1955?

A. No, we didn't. We tried to—I'm not sure—we did urge him when the sections went into Sylacauga and Lufkin that we be on the same basis, that the prices would be on the same basis between King and NEA, and that the pricing structure that was in International not be carried over unless he was going to do it for everybody.

Q. Let's see if I understand you. Between August and October of 1955 were you trying to urge Mr. Koessler to give NEA, at Sylacauga and Lufkin, the same price that he was giving King, is that correct?

A. No. Between August and October, I don't know. We knew——

Q. I am limiting the discussion to that period.

A. Whenever that point was that they were going to build and the provisions of the contract became effective, that
2814 we could be in those plants if we wanted to, and we wanted this basically to apply to everybody.

Q. I am trying to get your present recollection of your discussion with Mr. Koessler between August and October of 1955, and those before you crossed every t and dotted every i on the contract, while you were negotiating with him. You testified there was some discussion about the price that International was charging King. Now, I am trying to ascertain what the discussions were that you had with Mr. Koessler concerning International's pricing to King?

A. I will try to make it clear what they were. I don't know what more I could add to it.

Q. Here is what is confusing——

A. We were selling a plant, there was a lot of things we would talk about. The one thing we did was to try to get as much for Buffalo Color Press as a going concern, the good will and the customers in there, as we could. This was one part of the negotiation, the sale of the plant. As to the pricing that existed between International and King prior to August 1st, when we knew that sale had been made of International, we talked about pricing, about the whole market. We complained, we always complained that we ought to have the pricing cheaper.

2815 We didn't ask him to change the basic structure. In the sale we agreed his pricing structure for the newspapers was certainly low, we could live with this. What is the question?

Q. That is what confuses me. You did not ask him to change the price, you expected him to change the price, you were telling him that King was able to buy cheaper than you on small runs. What were you saying to him about it? Was it just an academic discussion, "They can buy cheaper, I want you to meet the price or increase their price", what were you telling him to do?

A. We were—he told us that he had inherited this contract, right?

Q. Yes.

A. He had to live with it.

Q. And how did the discussion come up if you were not seeking a decrease in your price and if you were not seeking to have him increase International's price? What were you discussing, what were you telling him?

A. We were constantly discussing about what the value of Buffalo Color Press was, what we had, the payments that he was going to make, how they would be made. This was
2816 a return of capital of many of these accounts. This was—

Q. Did you also say to him at that time—please try and recall, I know you want to cooperate, you are under oath and you want to tell the truth, it takes a little effort to recall these events—to the best of your recollection, did you have any discussions with him at that time or complaints that King was adding King Features in runs that NEA had and substituting King runs for NEA features, did you have any such discussion with him?

A. Yes, we talked it over. I am not going to repeat your exact words or accept your exact words.

Q. Say it your way?

A. We complained about King. This had been going on for years. We complained we wanted them in our camp, we wanted them to understand our problems, we complained for years that if King had a readyprint color comic section made up of King comics that we found it very difficult to sell NEA comics, the rights to NEA comics to that paper because they were told by King that the page change charges were too high to allow the change in this readyprint section, this King section, to accommodate NEA comics. We said, "How could they be, we understand that Wilkes-Barre, International, isn't charging King anything for page changes." We complained about that, yes.

2817 Q. You complained to Mr. Koessler?

A. Sure we complained, yes. I would complain to anybody about it, I would complain to you about it.

Q. This is the most important thing—

A. All right.

Q.—do you recall whether you asked Koessler to do something about it between August and October of 1955?

A. Between August and October of 1955?

Q. About that problem?

A. I think—whether we asked him to do something about it, talk to King about it, this would be a good question, I don't know. We probably said King ought to stop it.

Q. Now, what I am asking you to recall is that the climate was such and your discussions with Koessler were such that he knew you were complaining about this practice of King's, is that correct?

A. Yes, I think he had known about it for ten years.

Q. This is the important thing that I have been asking you to recall; whether you asked Mr. Koessler to speak to Nicht about that or whether Mr. Koessler told you, volunteered to you that he had spoken to Nicht about it, or whether it was a mutual thing, you both knew it, you both wanted it to stop, and that he did tell you that he spoke to Nicht about it, that is the important thing.

2818 A. He may have told Mr. Walker. He may have said that. We didn't know he was seeing Nicht up until August 1st. We didn't know he was seeing Nicht.

Q. After August 1st you knew that?

A. Yes, we did.

Q. Now, the question is; did anything that Mr. Walker said to you during that period lead you to believe then, between August 1st and October 1955, that Mr. Koessler was talking to Mr. Nicht about it?

A. I think Mr. Koessler may have said, 'I will talk to him.' I don't know whether he did, he may have, I don't know.

Mr. MOORE: Again, I don't want to interrupt, but I want to reserve my rights on the motion to strike.

The COURT: I understand. Mr. Anderson is giving generalities, and that is not binding on you in any fashion, that kind of proof. You see, Mr. Anderson, that is just your surmise of whether Koessler might have. I think you are going further than you need.

The WITNESS: I am trying to be helpful to the Court. 2819 I may be going further than I should.

By Mr. BERNSTEIN:

Q. I appreciate that, Mr. Anderson, and I am trying to ascertain whether you are able to state under oath that you presently recollect some conversation with Mr. Koessler between August 1, 1955 and October 1955, before the Beverly meeting, that he had told you that Nicht was not going to take NEA accounts away from them?

A. Not what?

Q. Nicht was not going to take any NEA accounts away?

A. Between August and October you are saying?

Q. Right.

A. No, I don't think so. He may have said, 'I will talk to Nicht' but——

Q. Now, let's think back to prior to the Beverly meeting; at that time did your complaints to Mr. Koessler increase in volume now that you knew he had Buffalo Color Press, he had International, did your complaints increase in volume that King was putting King Features in NEA accounts?

A. Back in 1955?

Q. Back in 1955.

2820 A. Before we sold, after we knew——

Q. After the deal?

A. Mr. Bernstein, I don't know. As I say, it was a continual complaint, we were trying to sell the comic sections, we complained to everybody.

Q. Now, let's get to the Beverly Hotel meeting and try and refresh your recollection. Now, I know that is difficult. Do you

have a present recollection of whether you went to New York City specifically for that purpose or were you there for some other purpose?

A. I don't recall that. I have been trying to. I don't know, I don't recall whether I stayed at the Beverly on that occasion. Sometimes I did, sometimes I did not.

Q. You don't recall anything as to the events that immediately preceded that meeting, how it came about?

A. The events immediately preceding the meeting?

Q. The conversations with Mr. Koessler about it, or the conversations with Mr. Walker about it, how you happened—

A. Well, I recall we were going down there to meet Nicht, he was going to be introduced to us by Koessler.

Q. Do you recall that you were going down there to get confirmation that King was not going to take NEA accounts?

A. No we were going down to get that agreement.
2821 Certainly, as I said before, this was not cut and dried before. As I testified, when I left I was not sure we had it. This was not a thing that had gone on, planned, and we were going to meet and shake hands, no. This was a meeting with Mr. Nicht.

Q. Do you recall whether or not prior to that meeting and after October 1955 that you had told Mr. Koessler that if King wouldn't take NEA's accounts, NEA wouldn't take King's accounts?

A. I don't recall specifically. I imagine we were looking for breathing space there and we might have indicated that, yes. We were—we were—yes, we would welcome breathing space, time to see where we were going in the printing business. We lost a publishing company in 1954, Merrick Printing Company. We had been to World Color and made our best efforts and they said no, they were going into the comic book business. We were still looking for printers and trying to find out where we were going. We were off base by the purchase of International. I think we probably told Koessler, 'If you can get us some time, we would buy it.'

Q. What does that mean, would you please elaborate?

A. Yes. We would be—our color comic supplement business was under strong fire from King. We were being
2822 shot at, losing sections, we seemed to be underpriced here. I wanted—we wanted time, since we had sold Buffalo Color Press, no arrow in our bow, but we wanted time to

see where we were going in this color printing business, and we were willing for a truce. It was a mistake, a foolish mistake, but we were willing.

Q. By "truce" you mean you were willing to refrain from soliciting King's accounts, is that correct?

A. That is right.

Q. In exchange for their willingness not to solicit NEA's accounts?

A. That is right.

Q. And is it the truth that you communicated this wish or attitude to Mr. Koessler?

Mr. MOORE: He asked him that question four times and he said he may have, he might have, he doesn't remember.

The COURT: Give your statements to Mr. Koessler, as best you recall them.

The WITNESS: I don't recall. Mr. Koessler said he would introduce Nicht to us. I am sure we——

The COURT: In other words, you say I think that he
2823 was aware of your critical problem and he said, to the best of your recollection, 'I will put you in touch with Nicht'?

The WITNESS: That is right. I go further and say that before he said that we indicated we would have a short truce.

The COURT: With Nicht?

The WITNESS: With Nicht, yes, sir.

By Mr. BERNSTEIN:

Q. You told that to Koessler, you told that to Koessler?

A. I don't know. Yes, I communicated with Mr. Koessler, yes, I agree. I don't know—this must have been it, I don't think we would have gone to see Nicht unless we thought there was some—he might agree to something.

The COURT: The fact is Koessler never purported to act for Nicht? He never said you are in or out, he said, 'I will put you in touch with Nicht'?

The WITNESS: No, as far as we knew Koessler couldn't speak for Nicht.

The COURT: We will take a short recess.

2824 (Thereupon the Court was in recess at 3:00 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 3:30 P.M.)

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson, inviting your attention to the period that wistely following the Beverly meeting; is it correct to say part of when you left the meeting NEA intended to adhere to its

A. The agreement, is that correct?

Q. And to it if King did.

body Did you make this fact known to your salesmen or any-

A. Else?

Q. Yes, we made it known to our sales manager.

A. Who is he?

didn't William Borglund. An individual situation came up, we some —we let the salesmen—told the salesmen to back off in meetings. We didn't give them the details of any Beverly

Q. ing.

this? You did not disseminate a salesmen's bulletin telling them

2825 A. No.

Q. You did not have a sales meeting, calling the sales-

A. men in, telling them as a group?

Q. No.

from Had you been in the practice of having sales meetings instrume to time, bringing the salesmen in and giving them

A. actions?

meet We operate on an informal basis in that we do have sales Newsngs sometimes at a meeting of the salesmen at the Annual call for paper Publishers Meeting, they would be in, we would

Q. or a sales meeting there.

semin I am trying to ascertain the full extent to which you dis-

A. ated knowledge of this Beverly—

to Bill believe the full extent to which we disseminated it was was Bill Borglund and probably to Jack Gamble. Bill Borglund Jack director and vice-president and manager of sales, and

Q. Gamble was sales manager, sales director.

stand And no one else immediately after that, but did I under- to as you to say that as a situation arose you would tell that

A. salesman?

to him We would not describe the details of the Beverly meeting seem but we would tell him to lay off. I suppose we—this

ed to get out, not as a formal bulletin, this sort of thing, but 2826 enough people knew it, it was general knowledge.

Q. Take P-36 in evidence, for example, Mr. White-head's sales report dated January 19, 1956. Mr. White-

head says—I am inviting your attention to the fifth paragraph down—Mr. Whitehead says, “Since that time I have discussed this with W. H. B. and Earl Anderson, who state that under our new arrangement with G. B. P. we will not attempt to take any current contracts away from K.F.S.—”, and there is some other language in there. Is that typical of the kind of instructions that you would give a salesman when the occasion arose?

A. No, it is more an indication of how informally that was passed on, because Mr. Whitehead was—he was assuming things when he wrote here. He did not have any direct word from us as to what we were doing.

Q. Did he have any word from you?

A. I told him to lay off, told him not to make—to make a competitive—try to make a competitive quotation here to the General Advertising Service, Incorporated. I knew he could not get the business anyhow.

Q. You told him not to—

A. He could not make a competitive quotation, he was not able to, I was not able to.

Q. Did you tell him that you had an arrangement with Greater Buffalo that you would not attempt to take 2827 any current contracts away?

A. No.

Q. Did you tell him that at any time before or at any time thereafter?

A. No.

Q. You never told him that?

A. No.

Q. Do you recall telling any salesman, other than Gamble or Borglund, not to make any competitive quotations?

A. Yes.

Q. Who?

A. There were other salesmen. I don't know that I can specifically name them. The same situation came up here where we couldn't get—couldn't hope to get the business, and I told them not to make a competitive quotation.

Q. Now, do you recall ever telling a salesman not to make a—strike that out. Were you in frequent direct communication with the salesmen or would your instructions be passed on through Mr. Borglund?

A. This was—this would vary. In early 1956 I was still in Buffalo, commuting back and forth between Buffalo and Cleve-

land, and these would be all through Mr. Borglund or Mr. Gamble.

Q. When you were in Cleveland did you have direct contact with the salesmen or did it go through someone else?

A. I might have direct contact with them but in many cases it would be handled by Mr. Borglund or Mr. Gamble, they were the sales directors.

Q. Do you recall any situation where you told the salesmen—let's take immediately after the Beverly meeting—not to solicit an account where you could have gotten the account?

A. I don't recall. I don't recall any exact instance.

Q. Do you recall there were instances?

A. I don't recall there were instances of this.

Q. You received a copy of P-36, Mr. Whitehead's report, did you take any steps to tell Mr. Whitehead that you did not have an arrangement with Greater Buffalo that you would not attempt to take current accounts away from King?

A. No, I did not.

Q. On P-38 in evidence—

A. I will qualify that, I say I did not correct him in writing, I would doubt that I corrected him on it.

Q. In March of 1957, P-38, again Mr. Whitehead says, in a report that you got a copy of, the last paragraph: "Since we are in agreement with King Features Syndicate not to take each other's present printing contracts, I explained to Robinson—", et cetera.

2829 A. Yes.

Q. So that did you take any action then to correct Mr. Whitehead's impression?

A. No, I did not.

Q. Then in P-39 Mr. Walker refers to Mr. Whitehead's report about the Jackson, Mississippi State Times, and then he says in the last paragraph: "It's all right to be high in cases like this, but I don't believe I would put the figure up as high as you did in this case. More like \$1.00 to \$1.50, I would say. Some suspicions might be aroused on the higher quotations." Did you get a copy of that?

A. I don't see that I was marked for a copy. I recall having seen it, yes.

Q. Did you have any discussion with Mr. Walker about that method of making your quotation in those situations where

you determined not to be competitive not too high so that the newspapers would not be suspicious and think it wasn't a genuine bid?

A. No, I have no recollection of having talked to Mr. Walker about this case.

Q. Did you do anything with respect to that at the time?

A. This was about the time that we decided this was not for us, the Beverly agreement, and we—this sort of thing is what we didn't like.

2830 Q. In May of 1958 you sent that bulletin to the salesmen—that was October 29, 1958. I am referring to N-1, you sent the memorandum to the salesmen calling their attention to the fact that some of them had the notion that NEA doesn't want them to solicit readyprint business, you were telling them that this was not the case?

A. That is right.

Q. That is the first time you did it, October 1958?

A. We had told many individually before this.

Q. You say "we," do you mean you, Earl Anderson?

A. We had—I, Earl Anderson, Jack Gamble, Bill Borglund—I don't know about Walker—had told them that this was all, we were not doing it any more.

Q. Then what was the occasion for the memo to all salesmen?

A. The occasion of the memo was the sending out of the routine office thing.

Q. And would you tell us what the circumstances were that led you to decide the Beverly agreement was not going to be honored any longer?

A. Yes, sir. We decided that it was foolish to have gone into it in the first place. In addition to that, it just hadn't worked.

We had seen no evidence that we were helping our situation. We were starting to get our printing arrangements squared around where we were ready to go full blast and slug it out.

Q. Can you fix a date of when that happened?

A. No. The last date I can come up with is Jackson. Jackson is the last instance I can think of or recall where we ever adhered to the so-called Beverly truce. I think that was in 1957.

Q. Now, inviting your attention to N-7. Do you have any knowledge of this transaction outside of what is contained in the document? Do you have a personal recollection of this transaction other than what you see from the document?

A. No. My recollection is that we were trying to sell the section.

Q. You have no recollection of this transaction with the Lima News other than what is contained in the document; that is my question. The only knowledge that you have—strike it out—

A. No. I read the report.

Q. Right. This morning you testified about the Lima, Ohio News, and I am trying to ascertain whether it is a fact that all your information about this transaction, the Lima News, comes from this sales report, N-7, is that correct?

A. As general information going on. This is the 2832 information in here that applies to Lima News. I don't recall of anybody specifically quoting any other prices, any other—I don't know quite what you want me to recall. I would like to try.

Q. I am trying to ascertain this. You testified this morning and characterized N-7, the transaction of the Lima News. What you were doing was reading the report and then giving your summary of what you had read in N-7, is that correct?

A. Yes, Basically, that is right. I recall I went back and got the report.

Q. You were not testifying about your present recollection of this transaction; you were summarizing what appears in N-7, is that correct?

A. I suppose the two melt together, I can't give a specific answer to that.

Mr. STEVENS: Now, your Honor, if I may comment; I do not understand that last inquiry. Mr. Bernstein was eager to say that he had no objection to this exhibit going in evidence.

Mr. BERNSTEIN: That is the whole point. I was trying to save time this morning. My objection to the line of 2833 questioning should have been the best evidence rule, the document speaks for itself. I permitted the witness to summarize it so that the Court will get the benefit of where we are going and what the testimony is. Now it is clear on cross-examination that the witness was doing nothing more than stating what appears in the document, and the document speaks for itself.

The WITNESS: It is an office record. Excuse me.

The COURT: I think what you are trying to say is that that is a fair summary of the events about Lima, but that you did

have information, apparently from talking to your salespeople, about that general concern over this.

The WITNESS: That is right. We have seven salesmen who write on the average of 200 reports, and we are all trying to sell readyprint color comic supplements wherever we can. For me to tell you that I have an exact memory of this situation is not right.

2834 By Mr. BERNSTEIN:

Q. You don't?

A. No, but I remember what was going on.

The COURT: As the sales manager you've got to keep posted on what is going on?

The WITNESS: Certainly. In 1956 I was posted on what was going on, but this is eleven years ago, and—if I can speed it along at any time, if you would tell me what you are driving at—this is an office record of what went on. I went back to this, found it, and refreshed my memory about Lima, Ohio. I know from my knowledge and experience in the field that we had tried hard to get this Lima News run.

By Mr. BERNSTEIN:

Q. Who was this—

A. This is out of our report.

Q. —salesman, H. R. H.?

A. Hal Hanson.

Q. Did you tell Hal Hanson after the Beverly meet-
2835 ing about the Beverly truce?

A. As I said before, we didn't tell the salesmen about the Beverly truce. We told them in specific instances, this is not one.

Q. On March 21, 1956, when Hanson was going after the Lima News, he knew nothing about your Beverly truce arrangement, is that correct?

A. He didn't know the details of the Beverly truce. Whether another instance existed where we had told him that we could not make a quotation, a competitive quotation, and thereafter he knew—

Q. You don't know that?

A. I don't know.

Q. That is what I wanted to establish.

A. Whether this arrangement was in effect, I don't know.

Q. Let's take N-8, that also talks about the Lima News, and that is a salesman—is that another salesman, J. W.?

A. J. W., yes, that is another salesman, James Weiss.

Q. Did you tell Weiss not to go after the Lima News pursuant to the Beverly agreement?

A. No, I didn't tell him, nobody told him not to go after the Lima News.

Q. Do you know whether or not you told Weiss prior to January 30, 1957, in connection with any other account, not to go after the account because of the Beverly agreement?

A. No, I don't know. I don't know any specific instance where I or anybody else—I had overall interest in this readyprint business, but some of the detailed things were handled by others in the office.

Q. So that as of January 30, 1957, Mr. Weiss might not have known about the Beverly agreement?

A. As of January 30, 1957; I don't know.

Q. All right. Now, do salesmen's quotations have to be approved by the home office or by anyone, or are they free to make quotations and that is it, or make arrangements? Let's take the Lima News situation; did Mr. Weiss or Mr. Hanson have the authority to consummate the transaction with the Lima News at the terms they suggested without authority from anyone at the Cleveland office?

A. They needed the information from the Cleveland office as to what the costs—the printing costs of the section would be. They were under the supervision of the Cleveland office.

Q. Did they also need instructions from the Cleveland office as to what price to be quoted, or range of prices to be quoted?

A. Normally, yes.

2837 Q. So that if someone in the Cleveland office made—that someone being you or Mr. Borglund or Mr. Gamble—made the determination that this was an account that you were not going to abide by the Beverly truce agreement, then you would give him a price that would permit the salesman to get the account, is that correct?

A. We would give him the prices from the Cleveland office, normally, this is correct.

Q. Here is what I am trying to find out. Is it the fact that if there was a situation where you decided you were going to honor the Beverly agreement, and he asked for a quotation, and the salesman did not know about the Beverly agreement, you would give him a price that would not be competitive, and

he would still not know about the Beverly agreement, and submit the price?

A. He would know something was wrong. He knows, in the instance of Lima, we were pricing this thing so low, that is no question he knows he has the right price.

Q. If he knew the price was too high, you would know that, you would have to tell him it was because of the Beverly agreement?

A. Because—yes, not because of Beverly, we wouldn't
2838 put it that way. That is a word that has come up since the trial.

Q. What would you tell him?

A. That we were not going to try to take this particular King run.

Q. Did you tell him why?

A. I don't think we did, but something like this gets around. We didn't specifically tell him.

Q. It does not surprise you a salesman would infer it was because of the sale of Buffalo Color Press and the arrangement with King?

A. He would not infer because of the sale of Buffalo Color to Greater Buffalo—I don't know what a salesman would infer. He would infer we were not being competitive against King on this run printed by King, yes.

Q. He would infer this was deliberate, he would know it was deliberate?

A. Yes.

Q. Now, in the early part of 1955—let's take the period of time somewhere around August, when you first learned that International had acquired—excuse me—when you learned Greater Buffalo had acquired International stock. Do you recall whether or not it was common industry knowledge then that International printed exclusively for King?

2839 A. I don't know about the industry. We knew that this was a captive plant of King's.

Q. You knew it?

A. Yes. Others knew it, I am sure.

Q. Is this the fact—I don't want to put words in your mouth—I am leading you to see whether it is the fact—is it a fact that you knew that King had most of the contracts with newspapers in the southeast and those were being printed at International?

A. Yes, I knew that King had the bulk of the business in the southeast. Certainly they had ten times as much as we did.

Q. You also knew at that time that International and King were preparing to open a plant in the south, in the Sylacauga area?

A. No.

Q. What did you know about that?

A. We were scrambling wherever we could to find out what we could about the plant in Sylacauga, in Lufkin, in Childersburg, Tennessee, all those places. All we knew was what we picked up from newsprint suppliers, and writing as far down to our salesman in Dallas and asking him. This is what we knew. We were trying to get as much information as we could.

A. Now, in August of—strike it out.

2840 A. What time is this you are talking about?

Q. In October of 1955 when you signed the contract with Greater Buffalo providing for the printing for NEA, you refer, on page 3, paragraph 3, that printing may be done either at the Greater Buffalo plant in Buffalo, New York, or the plant in Dunkirk, New York, or the plant now being constructed at Lufkin, Texas and Sylacauga, Alabama, and any other plant they may construct. Did you know at that time that International and King and Greater Buffalo—strike it out. Did you know at that time that International was planning for the construction of a plant at Sylacauga, Alabama?

A. No, we didn't.

Q. Did you know that Greater Buffalo was planning to build a plant at Sylacauga, Alabama?

A. Yes, we knew that.

Q. What did Mr. Koessler tell you about that, if anything?

A. Well, I know Mr. Koessler didn't tell us very much, I would be sure of that. When he actually told us, yes, he was going to build a plant in Lufkin and Sylacauga, I don't know. Probably about the time it became general knowledge.

Q. Well, it certainly was——

2841 A. But——

Q. —it certainly was in October because that is in the agreement?

A. That is right.

Q. I am trying——

A. No question about it.

Q. I am trying to get your present recollection. I know it is difficult to think back. It was in August of 1955 that you learned he bought International, between August and October you were discussing the details. I am trying to find out whether it was sometime during that period that you learned from Mr. Koessler he planned to build a plant in Lufkin and Sylacauga?

A. I wish I could help you. I have no frame of reference as to when we first knew that Mr. Koessler was building in Lufkin or Sylacauga.

Q. Let's approach it this way. You testified earlier today that when you learned that Greater Buffalo had purchased International, this gave you a great deal of concern, did it not?

A. Yes, it did.

Q. Why?

A. Here was a complete change in the printing industry. We had looked at King having a captive plant in
2842 Wilkes-Barre that we knew was becoming in a run down condition. We felt King had favorable printing prices because they were bleeding that plant. We didn't know how long that could go on. We had about a tenth or a ninth of the business they had. So when we found that Greater Buffalo Press had bought International and the situation was now changing, we didn't know which way it was going or what it was, but the situation had changed.

Q. What did you fear about the situation?

A. I don't operate on fear.

Mr. MOORE: Will you please not answer the question so I can make an objection. I can't sit by and just——

The COURT: Do you object to that?

Mr. MOORE: Yes.

The COURT: Sustained.

Mr. BERNSTEIN: Your Honor, might I state at this time that I don't think——

The COURT: What were the facts surrounding the entire industry that you knew about, that you considered this acquisition was going to affect in some way, and if you had
2843 some knowledge, how did you feel it was going to affect the trade practice; not what you feared.

The WITNESS: Yes, we had concern about it. Here was a new situation we were presented with in the printing industry. We had a color printing plant in San Bernardino, Acme. We

had previously tried to interest other printers in the smaller readyprinted color comic supplements. We had tried to get World Color, a tremendously big printer of comic books, not comic supplements, but they didn't like the business. We were now——

The COURT: That was your bread and butter, that pre-printed——

The WITNESS: Readyprint business, that is right.

The COURT: You can't hope to compete in the other type of color comic printing?

The WITNESS: The larger runs largely are not for us.

The COURT: You knew that, you knew what you had to have for your bread and butter, you knew International had been sold to Koessler, that it presented a dilemma?

The WITNESS: It did.

The COURT: Will you tell me, as a printer or publisher, what in the trade that presented to you?

The WITNESS: We had to have competitive printing prices with King Features and others in the business. Now, if Koessler were going to go into International, we wanted to—we were concerned that he would build up that plant and still King would have the old price structure, the advantage on the smaller runs.

By Mr. BERNSTEIN:

Q. And that King wouldn't only have the low pricing structure, he would have a more efficient plant and a plant that would be financed by the better finances of Greater Buffalo Press?

A. That is right. The other consideration was that we didn't know would Greater Buffalo close up Wilkes-Barre and move the work to the plant they talked about in Sylacauga. We had no idea what was going on here, and while we had these other printing plants, the bulk of our work was at Greater Buffalo.

Q. You mean Buffalo Color?

A. No, I am sorry, this was going over to Greater Buffalo Press. Buffalo Color Press—we were on the verge of selling that, that was gone. We could not at this time have re-established Buffalo Color Press.

Q. Excuse me, we are mixing up the time period.

The COURT: You wanted to have the same printing facilities with Koessler that you always had?

The WITNESS: Yes.

The COURT: Your fear was that in some way that might disappear?

The WITNESS: We were not concerned that he would back up on the agreement he made with us, but we were concerned as to what King's competitive situation would be now, having Greater Buffalo's know-how going down to Wilkes-Barre, what their pricing structure would be there.

By Mr. BERNSTEIN:

Q. In August 1955, when you learned Greater Buffalo 2846 had acquired International, you had already been in negotiation with Mr. Koessler concerning the purchase of Buffalo Color Press?

A. Yes.

Q. Had NEA made a determination at that time that it was going to close up Buffalo Color Press, had a final determination been made as to that or were you in the process of negotiating depending upon—

A. We were pretty well determined, we had no way to go with Buffalo Color Press.

Q. You were pretty well determined that that was not going to be your source of printing. Had you been pretty well determined by that time, in August of 1955, that Greater Buffalo was going to be your printer?

A. Greater Buffalo—this was the arrangement, this was the part we were working on in the sale of Buffalo Color Press. Yes, I have said that several times, yes, that is right, you are right.

Q. I am not making myself clear. In August of 1955, after you had determined—or prior to August 1955, you had at some point reached a determination that Buffalo Color Press was no longer going to do the printing?

A. Right.

Q. At that time did you give consideration to other alternatives?

2847 A. We had given consideration to other alternatives.

Q. I am talking—

A. At that time.

Q. After you made the determination that you were not going to continue Buffalo Color Press, did you give consideration to other alternatives, other printers other than Greater Buffalo?

A. I am sure we had given consideration to other alternatives. I mentioned we had previously talked to World Color in St. Louis. They were certainly the best source if they were going into the business. But the consideration didn't lead to much of any other solution, other than to sell Buffalo Color Press to Greater Buffalo, as we planned to do.

Q. Did you ever discuss with any other printer, World Color or Acme or Eastern or any other color printer, the kind of arrangement that you discussed with Greater Buffalo, selling them the good will of Buffalo Color Press?

A. No, we did not.

Q. You never discussed with any other color printer about selling them the accounts?

A. There was no other color printer that would buy the accounts. No, we didn't.

Q. You then reached a determination that Buffalo
2848 Color Press was not going to do any printing, you were negotiating the deal with Greater Buffalo Press. In August of 1955 do you recall whether or not you were pretty much convinced that deal was going through with Greater Buffalo, you did not know the price, the exact terms?

A. Yes, by that time we were pretty sure we had an arrangement.

Q. It was a question of threshing out the details?

A. Yes.

Q. When you then learned that Greater Buffalo Press purchased International, were you still concerned about the situation or had that been before?

A. We were still concerned.

Q. Why were you concerned?

A. Because King now had a new printer who had the know-how and the facilities for printing color comic supplements better than International could continue to do under their situation. We knew of International's pricing structure. We were concerned about the comparison between International's pricing structure and Greater Buffalo Press's pricing structure.

Q. Did you make any effort to get Greater Buffalo into negotiations to give you the same pricing structure as International had with King?

2849 A. We certainly talked about pricing on the printing they were doing for us. Mr. Koessler said—I am sure—said that these were the standard prices he had for everybody.

they didn't vary, these were the prices that he had for our runs. The question was the payment they would make to us on our return of capital and on our sales commissions.

Q. Now, after P-28, the contract between NEA Service and Greater Buffalo Press was signed, did NEA transfer all of the printing that was being done at Buffalo Color Press to Greater Buffalo Press?

A. Well, not at that time. That was signed October 23rd. In early January of 1956——

Q. Excuse me, did you——

Mr. STEVENS: Did you say after P-28 was signed?

The WITNESS: I don't know what P-28 is.

Mr. BERNSTEIN: I said that.

Mr. STEVENS: You mean after P-27?

Mr. BERNSTEIN: P-28 is the same agreement between NEA and Greater Buffalo Press.

Mr. STEVENS: It is not. It is the agreement between NEA and Greater Buffalo, but it is not the same agreement.

2850 By Mr. BERNSTEIN:

Q. Let's talk about that——

Mr. STEVENS: If you are talking about transferring the assets of Buffalo Color Press, it ought to be related to the Buffalo Color Press contract, which is P-27.

By Mr. BERNSTEIN:

Q. I show you P-28 in evidence, Mr. Anderson——

A. This is P-28 you handed me here.

Q. You have P-28. Was that executed at or about the same time as P-27? I will show you P-27, that is the Buffalo Color Press agreement. Was it executed at the same time?

Mr. STEVENS: We will agree it was.

The WITNESS: Yes, it was.

By Mr. BERNSTEIN:

Q. Was it negotiated and discussed during the same time? Was it all one transaction?

A. Yes. I don't know which way we approached it, it was one transaction, all part of one——

Q. The reason for the two agreements was that P-27, 2851 in addition to providing for printing prices for newspapers that were then printed at Buffalo Color Press, also makes provision for the sale of equipment and inventory and something else, is that correct?

A. That is not the reason. This does make provision for it and perhaps is one of the reasons.

Q. P-28 is an agreement between NEA Service and Greater Buffalo Press which merely pertains to the printing, is that correct?

A. Yes, this pertains to the printing of new business.

Q. The terms and the prices and everything else are the same?

A. Yes. Perhaps I should explain one reason why there are two contracts, if you would like?

Q. Yes.

A. Buffalo Color Press was owned 60% by NEA and 40% by the E. W. Scripps Company.

Q. E. W. Scripps Company was the parent company of NEA, is that correct?

A. Yes.

Q. At that time?

A. Yes.

Q. So that Buffalo Color Press was owned 40% by E. W. Scripps and 60% by E. W. Scripps' wholly owned subsidiary, NEA?

A. That would seem correct, yes. As I said, NEA 2852 owned 60% of the stock, E. W. Scripps Company owned 40% of the stock. E. W. Scripps is the parent company and one of the major stockholders of NEA.

Q. That was an important reason for the two different—

A. No, this isn't the reason. The reason for this, this was being sold as a property, there was a reason for a division of the sale, what we got for the property, between the two stockholders. If you recall, the Scripps-Howard Company had come up to Buffalo and bought the Buffalo Times at one time and dropped a great deal of money keeping it going. This was back in 1935 or 1939. They had a loss picture. I don't want to go back too far. They had a loss picture, this was a return of capital against the loss Scripps had taken here in Buffalo.

Q. The fact remains that the only company that had contracts with newspapers for printing was NEA Service, Incorporated, is that correct?

A. No—you mean of the work that was done at Buffalo Color Press?

Q. That is correct.

A. No, that isn't correct.

Q. Buffalo Color Press, as you testified earlier—I apologize—had a direct contract with the Chicago newspapers?

2853 A. And directly with the Scripps—for the Scripps Howard Sunday papers.

Q. Now, as the agreement actually worked out, insofar as those papers were concerned, and insofar as the papers that NEA had contracts with that were printed at Buffalo Color Press, after January 1956, when Greater Buffalo Press paid a sum of money for printing those papers, that money ultimately—half of that money ultimately came to—strike it out—instead of half of the money I should say 60% of that money ultimately came to NEA, is that correct?

A. That is correct.

Q. And that has continued on?

A. That is correct.

Q. Is it—

A. It is, insofar as—unless we have lost—NEA has lost any of these customers here, the payments do not continue. Outside of that, yet, payments are still continuing.

Q. To this very day?

A. Yes.

Q. 40% Greater Buffalo Press is paying to E. W. Scripps Company, is that right?

A. 40% goes to E. W. Scripps Company under the contract you call P-27.

2854 Q. To this day?

A. Yes.

Q. Under P-28, where NEA has the contract with Greater Buffalo, there NEA gets 100% of the amount paid by Greater Buffalo for newspapers that were not then being printed at Buffalo Color Press, which NEA subsequently—

A. This is our selling commission. It is about 5% of the total cost of a section. It isn't a kickback, Mr. Bernstein, that you would like to call it.

Q. I don't want to engage in a debate with you. We will argue that to the Court. I want to get the facts out and the facts are that on some of the runs that are listed, are identified, in P-27, that are still being—still NEA's accounts, NEA is getting 60% from Greater Buffalo and the Scripps Company is getting 40%, and on other runs NEA is getting 100% from Greater Buffalo?

A. Under P-27, the Scripps Company is getting 40% and NEA 60%. Under P-28, NEA is getting all of it.

Mr. STEVENS: I would like to say that that is exactly what the agreement says.

By Mr. BERNSTEIN:

Q. At the time, in August of 1955, during your period of negotiations with Greater Buffalo Press, is it a fact that you also knew that King and Greater Buffalo were competitors in the sale of printed supplements?

A. Yes.

Q. And you have testified that King and NEA were competitors?

A. Yes.

Q. And did you have any discussions with Mr. Koessler concerning the effect there would be and the nature of the competition after Greater Buffalo bought International?

The COURT: Excuse me, could you hear that question?

Mr. BERNSTEIN: I will state the question again, differently this time.

By Mr. BERNSTEIN:

Q. In and around August of 1955 did you, Earl Anderson, give any consideration to the effect there would be on the competition between King and Greater Buffalo with Greater Buffalo's acquisition of International?

Mr. MOORE: Objection.

The WITNESS: I didn't—

Mr. MOORE: Wait a minute, wait a minute, wait a minute. I object to the form of the question.

2856 Mr. BERNSTEIN: May I be heard with respect to the objection?

Mr. MOORE: May I elaborate on the objection, if you are going to give a speech about it. My objection is to the form of the question, did he, Earl Anderson, give consideration to something. He is calling for the operation of the man's mind.

The COURT: Sustained.

Mr. BERNSTEIN: May I be heard with respect to that?

The COURT: Here is the way to put it. This gentleman is in the business, things are happening, he took certain action or he didn't. These general questions are objectionable.

Mr. BERNSTEIN: May I be heard on that?

The COURT: First I will rule on it. Sustained. Go ahead.

Mr. BERNSTEIN: I wanted to be heard before the ruling, your Honor.

The COURT: Nunc pro tunc.

Mr. BERNSTEIN: I do not regard that question as objectionable. I feel it is a question of fact, as to what the state of
2857 mind was of a competitor at a particular time, and that—

The COURT: He was worried, he admits that. If that is what you wanted him to say, I am sure he would.

By Mr. BERNSTEIN:

Q. Mr. Anderson, I am asking about the fact of what you did—

The COURT: That isn't what you asked him before.

Mr. BERNSTEIN: I am asking him to state what he did, if anything.

By Mr. BERNSTEIN:

Q. What did you do with respect, if anything, to the effect on competition there would be between King and Greater Buffalo after Greater Buffalo acquired International; did you do anything?

A. I don't remember.

Q. After Buffalo Color Press—strike it out. At the time Buffalo Color Press ceased its operations was NEA having printing done for it at any plants other than Greater Buffalo Press and Buffalo Color Press?

A. At the time, in early fifty-six, we had printing done
2858 for us at Acme Color Print in San Bernardino.

Q. Anywhere else?

A. No.

Q. Now—

A. No.

Q. Now, after Buffalo Color Press terminated operations did you continue to have printing done for you at Acme in San Bernardino?

A. Yes.

Q. Did you transfer any runs from Acme to Greater Buffalo?

A. I don't recall.

Q. Please try and recall whether or not you also had some runs printed at World Color at the time of the discontinuation of the Buffalo Color Press?

A. You are right. We still did have some runs—World Color was printing some runs for us after we closed Buffalo Color Press, and this continued up until late 1956.

Q. Then what happened, what did you do with those runs?

A. Those runs were moved to Greater Buffalo Press at the request of World Color. We didn't abandon World Color, they wanted to get out of the business.

Q. And did World Color—strike it out.

The COURT: Let me ask you, Mr. Bernstein, and you, Mr. Stevens. We had some idea that we were going to finish today. I am particularly concerned with whether you are going to be able to finish with Mr. Anderson. I assume he would like to go to Cleveland. But if you can't, you might as well tell him now. There will be some redirect, and perhaps Mr. Moore may have some questions. How about you, do you think you are going to finish the cross-examination tonight?

Mr. BERNSTEIN: No, your Honor, we still have the tie-in phase of it. I would estimate, at the minimum, we have two more hours with Mr. Anderson.

The COURT: Can I bind you to that now?

Mr. BERNSTEIN. Bind me to two hours, your Honor.

The COURT. Gentlemen, I normally would be glad to run until five and send Mr. Anderson on his way. Obviously, there is no chance. We will quit at the ordinary time of four-thirty and start at ten and we ought to have you on the way. If the estimate is right, about noon. Is that correct?

2860 Mr. BERNSTEIN: I am confident of that. I will be bound by it.

The COURT: I hope so. Good night, gentlemen.

(Thereupon the Court was in recess at 4:30 P.M.)

2861 (Proceedings of July 14, 1967, commencing at 10:00 A.M.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Anderson, inviting your attention again to P-27 in evidence, the contract for the sale of Buffalo Color Press to Greater Buffalo, and inviting your attention to page 2 where Buffalo Color Press agreed to turn over to Greater Buffalo Press "on the closing date all our supplement printing for the following named customers: NEA Service, Inc. of Cleveland,

Ohio, a named customer which also places orders for the named customers shown in Appendix B; United Features Syndicate——"

—was United Features Syndicate any affiliate of Scripps or Scripps-Howard?

A. Yes, it is.

Q. What was it at that time? Is it the same today?

A. I believe it is the same today.

Q. What was it then, what kind of organization?

A. It is a newspaper feature service, a syndicate. It sold comics, Sunday pages, daily comics, Sunday comics, columns.

2862 Q. How did it differ from NEA?

A. In the manner I talked about when I described NEA daily full service, in that they are strictly a syndicate, they sell their daily features separately to the newspapers, they can buy one of them or two of them, they sell them separately; and we are a service organization, offering a newspaper a complete service for the entire feature needs of their newspaper.

Q. Is United Features Syndicate like NEA, another branch of E. W. Scripps Company?

Mr. STEVENS: I object to the word "branch".

The COURT: Well, it is——

Mr. BERNSTEIN:

Q. Is it a wholly owned subsidiary of E. W. Scripps?

A. NEA is a subsidiary of E. W. Scripps Company. I believe the corporate setup of United Features Syndicate—I am not sure—it is part of the Scripps-Howard organization.

Q. Do you consider it part of the Scripps family?

Mr. STEVENS: We will agree it is an affiliate of E. W. Scripps Company. I don't know myself, your Honor, what its position is.

The COURT: I think we will have to leave it there.

2863 Mr. BERNSTEIN: Yes, your Honor.

By Mr. BERNSTEIN:

Q. Then reference is made in paragraph 3, page 2, to the United Press Associations of New York, New York, a named customer which also places orders for the named customers shown in Appendix D. Was United Press Associations in New York, an affiliate of Scripps?

A. Part of the Scripps-Howard organization, yes.

Q. What business was that in?

A. They are a newspaper service, news service, news wire service and news picture service.

Q. Did they also sell comic color supplements?

A. Not generally. I believe, without going back to look, this was probably a foreign customer. Generally, they were not selling readyprinted features, comic supplements.

Q. Look at Appendix D.

A. I don't seem to have Appendix D.

Q. All right. Then the next business that Buffalo Color Press agreed to turn over to Greater Buffalo Press was the Chicago Daily News of Chicago. Was that a Scripps affiliate?

A. No, it wasn't.

2884 Q. And was that——

A. It is not.

Q. Did NEA have any contractual relations with the Chicago Daily News for color comic supplements?

A. No. The contract or agreement with the Chicago Daily News was held directly by Buffalo Color Press.

Q. So that after Greater Buffalo Press commenced the printing pursuant to this contract, NEA received 60% of the revenue from the printing for the Chicago Daily News of Chicago, is that correct?

A. As a former stockholder in Buffalo Color Press.

Q. That is correct, isn't it?

A. Yes, that would be right.

Q. And the next company mentioned is the Indianapolis Times of Indianapolis, Indiana. Was that in the Scripps family?

A. Yes.

Q. The next was——

Mr. STEVENS: We will stipulate that the Columbus Citizen of Columbus, Ohio; the Indianapolis Times of Indianapolis, Indiana; the Knoxville News Sentinel of Knoxville, Tennessee; and the Evansville Courier Press of Evansville, Indiana, were Scripps-Howard affiliates.

2885 Mr. BERNSTEIN: Thank you very much.

Mr. STEVENS: No problem on that.

By Mr. BERNSTEIN:

Q. Now, after these newspapers, the Scripps-Howard affiliates and the Chicago Daily News, printing was turned over to Greater Buffalo Press, do you know whether they entered into contracts with Greater Buffalo Press for the printing, do you know that?

A. No, I do not know.

Q. Prior to Buffalo Color Press's demise, Buffalo Color Press had the contract with these newspapers for the printing, is that correct?

A. We had the arrangement for printing them. Now, whether actual contracts existed with the Scripps papers or with the Chicago Daily News, I would have to refresh my memory. I think there was a letter of agreement or perhaps a contract with the Chicago Daily News.

Q. You don't know whether there was a formal contract between these newspapers with Greater Buffalo Press or whether the same informal arrangement continued?

A. It wasn't an informal arrangement. These were set arrangements, the price and this sort of thing, for the 2886 printing. I don't know what contracts or lack of contracts Greater Buffalo Press has with the Chicago Daily News or with the Scripps-Howard papers.

Q. Very well. Will you describe for us, please, the nature of the competition between NEA and Greater Buffalo Press before Greater Buffalo Press purchased Buffalo Color Press?

A. We were printing sections at Buffalo Color Press. We also—when we couldn't the size section at Buffalo Color Press, or any other printer around the country, we would—Greater Buffalo Press became—we contracted the printing to Greater Buffalo Press. Now, largely, we were in the readyprinted color comic business, smaller newspapers, in which we assembled long runs of readyprint. These were largely our type of work that we were in, in that we were not particularly competitive with Greater Buffalo Press because they were not seeking that type of customer, they didn't have the salesmen in the field to handle that type of customer. Now, in some instances, on the longer runs, of an individual newspaper that had its own makeready, we tried in some instances to be competitive in pricing with Greater Buffalo Press. In most instances we were not successful in that.

Q. You were striving to get the business?

A. Our main interest, our sales effort, was devoted 2887 to the shorter readyprint runs.

Q. You were striving to get some runs from Greater Buffalo Press before the sale, is that correct, of the larger runs?

A. Mr. Bernstein, I can't think of any particular situation. I know that we were trying to find places where we could take

on some of these longer runs and be competitive in the printing of them.

Q. Did you at time compete with Greater Buffalo for smaller runs?

A. I don't recall of any situation. Readyprint runs, you mean?

Q. Yes.

A. I don't recall of any particular situation.

Q. Now, you say "readyprint runs", was there any kind of color supplement printing that NEA did that you did not classify as a readyprint run?

A. That NEA did or Buffalo Color Press?

Q. Buffalo Color Press, excuse me, that NEA did through Buffalo Color Press, or through some other printer?

A. Yes. The Scripps-Howard papers we had were not readyprinted runs, they were longer runs, and each one stood on its own two feet. So those were not readyprinted runs. Likewise,

I think I pointed out, the Chicago Daily News was about 2868 a third of our business, and this was a long run, which stood on its own feet, and it was not considered by us as a readyprinted run.

Q. You testified yesterday about eight-page standards and you said, if I understood you correctly, they were not readyprints because they didn't have all the NEA features in them, is that correct?

A. That is not correct. I did not make myself clear. Perhaps I should clear it up now. A readyprint run is any section in which the makeready is spread over one, two, three or more—I mean, two, three or more papers. This readyprinted section may be made up, as in the instance I showed, of all NEA comics or it may be made up of practically no NEA comics and other comics obtained by the publisher, licensed directly from whatever syndicate he is buying them from. A readyprint may have a great selection of outside comics from other syndicates in it and still be a readyprint.

Q. I understand. Thank you. Did NEA sell readyprints of that type, that had King Features in them, prior to the sale of Buffalo Color Press.

A. Yes, we sold some that had a limited selection of King Features in them.

Q. You sold some that had other syndicates features in them, including NEA features?

A. That was the point I was just trying to make.

2869 Q. And you also sold some that had no NEA features in them, is that correct?

A. I would say there were some that had practically no NEA, there were one or two that had absolutely no NEA.

Q. Did you find yourself in competition with Greater Buffalo Press for any of those kinds of readyprint runs where there were not all NEA features used?

A. With Greater Buffalo?

Q. Yes.

A. No, our competition was King Features.

Q. I am trying to ascertain whether at time you were in competition with Greater Buffalo for some of the smaller runs, readyprint or non-readyprint?

A. Greater Buffalo Press had as customers the Chicago Tribune, and they also had a readyprinted color comic section and that was printed by Greater Buffalo Press. So we run up against that sometimes, yes.

Q. Now, as far as the runs that Greater Buffalo Press was printing for NEA prior to the sale of Buffalo Color Press, were they for larger runs or smaller readyprints?

A. There were smaller readyprint runs of the six-page standard section. Buffalo Color Press didn't have the equipment to handle it. That was typical of the six-page standard I showed here.

2870 Q. Was that the bulk of what Buffalo Color Press was doing for NEA?

A. I would have to look at the list of customers we had at that time. I am not sure of that.

Q. Can you answer this; do you know whether Greater Buffalo Press was in competition for any of the runs that you turned over to Greater Buffalo Press to print for NEA prior to the Buffalo Color Press sale?

A. No, I don't know they were—I think they were—I don't know if they were in competition, I suppose they were in competition for the Chicago Daily News, possibly, for the Scripps papers, they were the type of runs they could handle more efficiently than we could.

Q. In turning over the runs to Greater Buffalo Press to do the printing for NEA—this is before the sale of Buffalo Color

Press—you did not regard them as competitors for that business you were asking them to print for you, is that correct?

A. If our man went out in the field and sold the sections—this is a matter of development when you go out and sell ready-printed color comic supplements, it is a matter of putting a package together—and Greater Buffalo wasn't in that business. This is a sales engineering job, to build a readyprinted package.

2871 So that kind of competition did not normally exist.

Q. Did you give any consideration to this. Here Greater Buffalo Press had the mats, they had the makeready had it all set up, and it was printing for NEA. Did you give consideration to the fact that Greater Buffalo Press would solicit that particular customer when the NEA contract would be cancelled, and take the business away from NEA?

Mr. MOORE. Just a minute. I object to that as coming in against Greater Buffalo Press, whether he gave consideration to something that Greater Buffalo might possibly do. I can't think of a more conclusory, speculative question. What bearing does the consideration that this man may have given anything have on it, how is it binding on us?

Mr. BERNSTEIN. May I be heard?

The COURT. Go ahead.

Mr. BERNSTEIN. The Government's point is; competition is at issue in this case. Competition is a state of mind, it is an attitude, it is the manner in which somebody seeks or refrains from seeking business. The Government's contention is
2872 that when there is at issue the state of mind of one of the parties to a transaction, that that becomes a factual matter to be evidenced by the testimony of one of the parties who was involved. He can testify as to what his state of mind was at that time because it is a fact, if it is the fact. Many witnesses were asked on the stand were they in competition, were they not, was he a competitor——

The COURT. You mean in competition or thinking about it? I suppose everyone is in competition or may be with potential customers and wonders about it, but I think the criteria is what did they do.

Mr. BERNSTEIN. That is the question.

The COURT. What overt acts were done?

Mr. BERNSTEIN. If you give consideration to something, and

decide to do nothing, the absence of doing something is a fact, and you have to show that the consideration was given
 2873 and a decision made to refrain from doing something.

The COURT. I think you have to show your overt acts first. Sustained. Something happened, you don't put it together that this is the result of his thinking. He did something either with Koessler or others, that is another side of the coin.

Mr. BERNSTEIN. Very well, your Honor.

Mr. STEVENS: Objection.

By Mr. BERNSTEIN:

Q. My question is; prior to the sale of Buffalo Color Press did you or NEA do anything to prevent Greater Buffalo Press from printing the same readyprints for those newspapers customers that you turned over to them to print for NEA when the NEA contract would expire?

A. Only in the sense they were our suppliers. You have to have some faith in this business. We put runs in World Color, we went to them and said, "Will you print for us?" and there was nothing in the world to stop World Color from selling it directly.

2874 Q. Did they ever do it?

A. No.

Q. Did Greater Buffalo Press ever solicit the customers that you turned over?

A. I wouldn't expect them to. The ones where we came in and said, "Look, will you print the sections for us?" now, for them, the supplier of us, or in any business, for the supplier to go out and say, "I am going direct to sell this customer that you have sold previously", seems to me would be a violation of good business ethics. I guess there is some faith in this business.

Q. That is exactly the answer that I was trying to bring out.

The COURT: He said that it is so unheard of, unthought of in his mind, that his printer would turn around and say, "Skip that salesman, I'll print it for you directly." In the nature of things, I assume his answer is no.

Mr. BERNSTEIN: That is the Government's point, your Honor.

By Mr. BERNSTEIN:

Q. So that after the sale of Buffalo Color Press, when
 2875 you turned over to Greater Buffalo Press all of the accounts listed in the schedules attached to P-27, and also the accounts referred to by reference in P-28, your ex-

pectation was that Greater Buffalo Press would not compete for those accounts, isn't that correct?

Mr. MOORE: Just a minute. Here we are again, his expectation.

Mr. STEVENS: Objection.

Mr. MOORE: Can't we stay within the confines of the rules of evidence?

The COURT: If you object to it, I sustain it.

By Mr. BERNSTEIN:

Q. I will ask the same question again, Mr. Anderson, did NEA do anything to protect itself from Greater Buffalo Press's solicitation of the accounts listed in P-27 and the newspaper accounts referred to in P-28?

A. P-27, I believe—certainly, NEA was protecting those, we are servicing them, we hold the contracts with them, we go out and help them. P-27 is a list of papers that NEA still is working with. There is a great deal of work to be done all the time, continuously, with these papers that have readyprinted color comic supplements. I hope you understand that.

2876 Q. I do.

A. This is not something you pick off the tree. You continue to work with these papers.

Q. You did nothing to prevent Greater Buffalo from obtaining those customers listed in Appendix B to P-27?

Mr. STEVENS: I object to that.

The COURT: Well, Mr. Bernstein—

The WITNESS: The contract speaks for itself.

The COURT: He said that when he has to sell is service, and I suppose if something good comes on the horizon and the customer is worthwhile, the salesmen tell them about it. He is selling service, he continues to sell it to this day.

Mr. BERNSTEIN: But the Government is trying to—

The COURT: What do you mean, entered into an agreement of some kind or a contract?

Mr. BERNSTEIN: Yes.

The COURT: Was there any?

The WITNESS: The contract is this one.

The COURT: I am talking about another agreement.

Mr. BERNSTEIN: The Government is not alleging any other agreement. The Government is alleging that implicit in

2877 this arrangement it is understood by both parties to the contract that Greater Buffalo won't compete for the business listed in Schedule A.

The COURT: I don't think it is implicit in the sense there is a snide understanding.

Mr. BERNSTEIN: No, no.

The COURT: They are not going to raid each other when somebody has got the contract.

Mr. BERNSTEIN: If we can have a stipulation as to that, that it is common industry practice when a printer prints for a firm like NEA, that it is common business ethics, they would not compete for the customer they are printing, there is no need to pursue this.

The COURT: How can he tell you what other people are doing in the business? He said——

Mr. BERNSTEIN: He has been in the business forty years.

The COURT: I know. He said that he had customers 2878 that he worked hard to get and he hired a printer, and he said, 'In my opinion, it never happened; in my opinion, no one thinks in terms of that, it is against business ethics.' That is what you are saying?

The WITNESS: Yes, I think that is right.

Mr. BERNSTEIN: All right. Very well. That is the point.

The WITNESS: On readyprint runs, these makereadys are ours, bought and paid for at Buffalo Color Press. This is a readyprint run, it is our business.

By Mr. BERNSTEIN:

Q. It is unethical for them to take the readyprint and print the——

A. I am not going to say what is ethical or unethical in this business. This is for somebody else to say.

Q. Take United Features Syndicate and the customers name for United Features Syndicate on Appendix C of P-27; is that the same category as the newspapers that were in Appendix B of P-27?

A. This is a customer that was with Buffalo Color 2879 Press, that was sold as part of the assets of Buffalo Color Press, a group of small eight-page tabloid sections all on one makeready, about eight papers, small papers, involved, I believe.

Q. You did nothing to prevent Greater Buffalo Press from

seeking those accounts as Greater Buffalo Press accounts when the contract expired?

A. When what?

Q. The contracts between the newspapers on Appendix C and United Features Syndicate, Inc.?

A. No. If I understand your question, the answer is no.

Q. Now, the other Scripps-Howard newspapers that had arrangements with Buffalo Color Press, and which were turned over to Greater Buffalo Press, did NEA service those newspapers thereafter?

A. NEA services the Scripps-Howard papers generally, not specifically and particularly on the Scripps-Howard account. We have to assure each business manager of each Scripps-Howard paper—he is looking out for himself—that he has the best printing buy he can get. There is nothing in the contract that says these papers can't leave Greater Buffalo if they want.

Q. Prior to that time the Scripps-Howard papers listed on page 2, paragraph 3, were not obligated to continue with Buffalo Color Press, even if they were in the same family, Buffalo Color Press and NEA had to give them a competitive price, otherwise they would not retain the business?

A. That is still true. That was one of our problems, our competitive prices at Buffalo Color Press, due to our costs, were getting out of line with other competitors printing. That is why we made the little money we did. We were getting out of line.

Q. Even though you were in the same family you regarded them as separate corporate entities, you had to compete as if it was a completely unaffiliated company, is that correct?

A. No, it is not correct.

Q. What is the correct answer?

A. You said we competed as though—we know these people—but, as I said, these people are free to go wherever they want, the business manager of each individual paper is free.

Q. Let's take the Indianapolis Times, of Indianapolis, Indiana, which is referred to in paragraph 3 of page 2—

A. You know the Indianapolis Times is no longer with us.

Q. Well—

A. Any payments from Greater Buffalo for the Indianapolis Times has long ceased, when the paper ceased publication.

Q. Which of the papers on page 2 of P-27 is currently being printed by Greater Buffalo Press?

A. Knoxville News Sentinal.

Q. Let's take the Knoxville News Sentinal. Does NEA service that account now?

A. We do not service specifically—no, we don't service the readyprint. We service the whole Scripps-Howard papers, generally, not specifically, for the readyprint account—not the readyprint account, the printing account.

Q. Does NEA have anything whatsoever to do with the obtaining of color comic supplements by the Knoxville News Sentinal?

A. The Knoxville News Sentinal is free to go where they want for their printing. We would encourage them to stay at Greater Buffalo Press where we can be sure we have the best arrangement for them.

Q. What have you done with regard to having them stay with Great Buffalo Press over the years, if anything?

A. Specifically, I don't know. We have maintained good business relationships with these papers.

Q. Does your salesman call on them?

A. Sure.

Q. For color comic supplement printing?

A. I am sure they take care of color comic supplement printing when they are there. They are not there for that specific purpose.

Q. Now, my question is whether NEA did anything to—strike it out. NEA does not have a contract with the Knoxville News Sentinal for the sale of color comic supplements?

A. No.

Q. You don't know whether the Knoxville News Sentinal has a contract with Great Buffalo for the printing of color comic supplements?

A. I don't know.

Q. It is printed at Greater Buffalo and NEA receives 60% of the figure mentioned in P-27?

A. Yes, for being a former stockholder in Buffalo Color Press, NEA receives 60%.

Q. After the sale of Buffalo Color Press to Greater Buffalo Press did the nature of the competition between NEA and Greater Buffalo change in any way?

A. I've got to think about that.

Q. Take your time, it's very important, think about it.

A. Did the nature of the competition with NEA, after the sale of Buffalo Color Press—I think we kind of covered that before.

Q. Let me ask you another question. Between August 1955 and October 1955, when you were discussing the turning over of Buffalo Color Press's customers to Greater Buffalo Press, and when you were discussing NEA seeking new business and receiving a payment from Greater Buffalo Press on the printing of the business that NEA would bring in, during those negotiations did you have any discussions at all with Mr. Koessler concerning any runs that Greater Buffalo Press would solicit and runs which NEA would solicit and avoiding competition between Greater Buffalo and NEA in soliciting those runs?

A. No, that didn't come up at that time. In this period we were still talking about selling our Buffalo Color Press plant. Lots of things hadn't been settled up to—almost up to the October period, and we hadn't decided yet what they were going to pay us for the plant, what we were going to get for the supplies we had in there, and none of these things had been settled. Up to that time we were talking largely about what the final arrangement might be here for that sale of Buffalo Color Press. To answer your specific question, no, I don't recall, at that time.

Q. Did there come a time when you had such discussion with Mr. Koessler?

A. As to which customers we would sell and which they would sell?

Q. Which customers Greater Buffalo regarded as Greater Buffalo accounts so that NEA would not solicit?

A. No, I don't think—I don't recall any specific discussion on that. I think it was pretty generally agreed—not agreed, understood, that we were largely in the readyprinted color comic field, interested in the smaller runs, but I don't recall any discussion at all on that. I don't believe there was any such discussion.

Q. Do you recall any instance when NEA salesmen were soliciting business and found out that Greater Buffalo was also soliciting that account? Do you recall any such instances?

A. Now you are going past the time of the sale. Yes, I recall, that is why I told you I didn't think there had been talk about

this. We ran into a couple of clashes. I recall down in Albuquerque, the Albuquerque Journal. That deal was never consummated but I recall that one.

Q. You are talking about P-32 in evidence, the letter to you from Mr. Koessler, and Mr. Koessler tells you that he has a salesman working out of Lufkin and—let's read the letter: "We have a man, Fred Jerauld by name, who is working out of Lufkin on the larger southwest accounts, and Albuquerque, New

Mexico is one of these. We have to get these larger 2885 papers on our own to keep the general overall price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve. It is my understanding that the Albuquerque Journal is not a Scripp paper. The Scripp paper, of course, is yours, if you can sell them a comic section." Which Scripp paper was he talking about?

A. That is the Albuquerque Tribune, I believe. There are two papers in this town.

Q. Now, he says: "Kenneth says he talked to you on this——", do you recall whether he did?

A. No, I don't.

Q. And Mr. Koessler says: "——and we will have a meeting to outline the accounts we wish to keep as our private preserve." Do you recall any discussion with Mr. Koessler concerning which accounts Greater Buffalo regarded as their accounts and that it would not be ethical for you to solicit?

A. No.

Mr. MOORE: What?

Mr. BERNSTEIN: Ethical.

The WITNESS: We didn't have such a meeting.

Mr. BERNSTEIN:

2886 Q. You recall that you didn't?

A. We didn't have such a meeting.

Mr. STEVENS: He said he did not have it. He said it as a fact, a categorical statement.

The WITNESS: We didn't have this meeting that Walter Koessler suggested we have here.

By Mr. BERNSTEIN:

Q. Walter suggested you have a meeting?

A. Or Kenneth, whichever it was. He said, "We will have a meeting." I don't know, Kenneth or Walter. "Kenneth says he

talked to you on this and we will have a meeting——", such a meeting was not held.

Q. Did you do anything, did you communicate anything to Greater Buffalo, either Mr. Koessler, Walter or Kenneth, concerning this request of his to have a meeting?

A. No, I didn't.

Q. Did you discuss that with counsel at all?

A. No, I didn't.

Q. Now, inviting your attention to P-27 again; would you please look at the list of newspapers that NEA turned over that is on Appendix D, and can you tell us whether there is any one of those newspapers that is not now being printed by Greater Buffalo Press?

A. Yes, there are some that are not now being printed.

Q. My question is this; is there any one on there for which you are not getting a commission that is still being printed at Greater Buffalo?

A. No, not to my knowledge, all of them that are still being printed by Greater Buffalo Press.

Q. At Buffalo or Dunkirk?

A. At Buffalo or Dunkirk or at Wilkes-Barre where you have them under injunction, we still get commissions.

Q. Let me understand this. Is there anyone on Appendix D, customers, printed for NEA at Wilkes-Barre?

A. Yes, there are.

Q. Are you getting a commission on that?

A. Yes, we are.

Mr. BERNSTEIN: Will you please read back the last question and answer?

(Thereupon the last question and answer was read by reporter.)

The WITNESS: May I make this clear?

Mr. BERNSTEIN: Yes.

The WITNESS: I think some of these accounts which we lost to King Features are now being printed at Wilkes-Barre on the King Features account. On those we do not receive any royalty. Now—is this clear?

Mr. BERNSTEIN: Yes.

The WITNESS: I think you had a misapprehension about it.

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson——

Mr. STEVENS: Let him finish his answer.

The WITNESS: If King took any of these accounts from us, they are no longer our customers. If Greater Buffalo prints them here, in Dunkirk, in Sylacauga or Wilkes-Barre or anywhere, we no longer get a commission, no longer have a return of capital on these.

By Mr. BERNSTEIN:

Q. That is if they have a contract with King, is that correct?

A. No. If we lost them, no longer hold the contract 2889 for them. Some of these have been lost to Southern Color.

Q. Have any of these been lost to Greater Buffalo?

A. No, I don't believe so. No.

Q. Have you ever lost any customers to Greater Buffalo Press since the sale of Buffalo Color Press?

A. Not that I recall.

Q. All right. Now, is it a fact then—

A. May I make one thing clear? Some of our runs, some of these runs are now printed at Wilkes-Barre on our account by Greater Buffalo Press.

Q. I understand that, that is what I was going to bring out, that some of the runs on Appendix D are printed under NEA contracts by Greater Buffalo Press and they are being printed at Wilkes-Barre?

A. Yes, not because we want them there.

Q. Okay. You prefer they not be printed there?

A. I would prefer they not be printed there, yes. I would like to have them in Sylacauga.

Q. On those accounts that are being printed at International's plant at Wilkes-Barre, NEA receives a commission on those accounts, pursuant to P-27?

A. If NEA still holds the contract for them, yes, you are right.

Q. That is all I wanted to make sure of. NEA does not 2890 have a contract with International?

A. NEA does not have a contract with International, yes, that is right.

Mr. MOORE: Wait a minute. Let me make clear; is counsel talking about a time subsequent to the time when Greater Buffalo acquired International?

Mr. BERNSTEIN: Yes.

Mr. MOORE: Then I don't know what the relevance of all this is.

Mr. BERNSTEIN: It doesn't make any difference whether you know or not, Mr. Moore, the witness is answering the question, and if you have an objection, please state so.

Mr. MOORE: I made an objection to the relevance of the question.

The COURT: Well, no, I think there may be relevancy. We know Greater Buffalo got the Wilkes-Barre plant, and that is the period you are talking about, subsequent thereto?

Mr. BERNSTEIN: Yes.

The COURT: I will hear discussion on it.

The WITNESS: You will have to repeat the question
2891 for me.

(Thereupon last question and answer was read by reporter.)

The COURT: I would be interested in knowing, it doesn't occur to me, you say you prefer that your runs not be printed at Wilkes-Barre?

The WITNESS: What happened, your Honor, is that shortly—I don't remember the exact year—after Buffalo Color Press was sold, our runs were printed in Buffalo or Dunkirk, and somewhere along the line Buffalo had a press down in order to remodel it, and they were short of press capacity, and they asked whether the runs could go down temporarily into Wilkes-Barre. I didn't like it, I agreed to it.

The COURT: I mean, is it harder to get to get to Cleveland or wherever you want it?

The WITNESS: We don't like to have our runs—my
2892 own feeling, personally, is that I don't like to have the runs in a plant that is devoted almost 100% to King Feature business.

The COURT: Well, I don't know about this. Do you think the printing is poorer or would you rather not have it so close to the competition? What can King do to you down there?

The WITNESS: Well, I think—I have faith in Mr. Gorman—I feel King could learn the length of our runs, the sizes of them, the makeup, this sort of thing, in our readyprint color comic supplements.

The COURT: In other words, it isn't a question of poor work, it is a question that you just as soon would not have your com-

petition know too much about your business, either by accident or otherwise?

The WITNESS: Yes. Generally, I think Greater Buffalo does a better printing job, but that is not the essence of it.

2893

By Mr. BERNSTEIN:

Q. Inviting your attention to page 4, paragraph 5; in your contract with Greater Buffalo Press it was your understanding that printing done by Greater Buffalo Press for NEA, if it was done at Dunkirk or whether it was done at Lufkin or whether it was done at Sylacauga, you would get the commission on it. Now, do you know of any runs that are printed, pursuant to that, at Southwest Color for NEA that NEA does get the commission on?

A. Yes, there is business down there.

Q. The only runs printed at Sylacauga or Lufkin or Wilkes-Barre that are listed in Appendix B that NEA does not get the commission on are the runs that are printed pursuant to contract with King, is that correct?

A. Of the named customers here, any runs that are printed for King, which King has the contract, Greater Buffalo contract does not provide for. We do not get payments for those runs. I thought I made that clear. You are misstating it.

Q. It is clear now.

Mr. STEVENS: It was clear before.

Mr. BERNSTEIN: It was clear before.

Mr. STEVENS: What you are trying to do is confuse him.

2894 Mr. BERNSTEIN: No, I am not.

Mr. STEVENS: You certainly were.

Mr. BERNSTEIN: I am not, I will not, I was not.

Mr. STEVENS: You were, deliberately.

Mr. BERNSTEIN: It was not deliberate, I do not intend to.

Mr. STEVENS: Then don't.

Mr. BERNSTEIN: I won't, I never have.

By Mr. BERNSTEIN:

Q. Mr. Anderson, can you recall, to the best of your recollection, how much before August of 1955 you first began to discuss the transaction which ultimately led to P-27, the sale of Buffalo Color Press to Greater Buffalo?

Mr. MOORE: We were all over this yesterday.

The WITNESS: The transaction wasn't discussed prior to early summer. We talked what we were going to do with Buf-

falo Color Press. It was a long-term, continuing problem for us. I go back to 1937, and I was not particularly concerned with those things at that time with NEA. I go back to after the 2895 war, and I became more interested in these things. I would say from 1945, when I came back from the Army, I got——

By Mr. BERNSTEIN:

Q. Certainly from August to October of 1955 discussions were pretty serious, and it was a question of completing the details that led to P-27, is that correct?

A. Yes.

Q. I am trying to find out whether that——

Mr. STEVENS: Wait a minute, would you define what you are talking about, completing the details? What makes you say "details"? They were working out a contract.

Mr. BERNSTEIN: Do you have an objection?

Mr. STEVENS: I do object.

Mr. BERNSTEIN: Will the Court rule on the objection?

The COURT: Now, there were final things they had to agree upon before you entered into a contract for the sale of Buffalo Color Press?

The WITNESS: Well——

The COURT: I am talking about details.

2896 The WITNESS: Sure, there were major items to be discussed as well as details, all along the line. I said earlier we had all these major things up to October to come to an agreement upon.

The COURT: Hasn't he said that before?

The WITNESS: I don't know what you are driving at.

By Mr. BERNSTEIN:

Q. Let me try this. I invite your attention to June 1, 1955——

A. June 1st?

Q. That is right. Somewhere prior to June 25, 1955, what was the state of the negotiations between Koessler and yourself for the sale of Buffalo Color Press?

A. We had a lot of putting together to do after—you mean from June, the last of June until October when we sold the plant or completed the deal, we had a lot of work to do, yes.

Q. I am trying to find out——

A. We hadn't settled what they were going to pay for the plant, what the commissions were going to be. We hadn't talked, I don't believe, I am sure, about the question do they

2807 take over the lease of the plant. All these things pile up here in the sale. Does that answer your question?

Q. Yes, it does. Is this the fact; that by June 1, 1955, Buffalo Color Press had reached a decision it was going to go out of business and that Greater Buffalo Press would do the printing for it?

A. By June 1st—

Q. 1955?

A. I said in the early summer we—

Q. What do you mean?

A. I don't know—we had decided about this time, certainly Buffalo Color Press—before June 1, 1955, we had decided that Buffalo Press was coming to the end of the line and something had to be done about it. Now, as I said earlier, it was about that time that the negotiations were started, we started seriously talking about the possibility of selling Buffalo Color Press to Greater Buffalo Press. Now, those negotiations then went on up close to October 23rd when the final agreement was made.

Q. I understand that. This is what I was leading up to. Did Koessler at any time there in June 1955, and prior to June 25, 1955, say to you that he was then negotiating with Frank Nicht that Greater Buffalo Press would be Frank Nicht's exclusive printer?

A. The first we knew that Greater Buffalo Press had any idea or were going to buy International was the date established in that letter when Herb Walker—let me tell you again—nobody in our concern had any idea that Greater Buffalo—the first we knew was the trade announcement. I don't want to get confused by dates, but the first—I believe that was August 1st—

Q. I am not trying to confuse you. I am trying to ascertain this. There is no doubt whatever in your mind, it is the truth that Walter Koessler never told you at any time that he was discussing with Frank Nicht, Frank Nicht's request that Greater Buffalo Press be the exclusive printer for King Features?

A. Walter Koessler never told us of any discussions that he was going to be the exclusive printer for King.

Q. I believe that.

A. Well, I wish you would, I think I have said it several times.

Q. I believed it right along. I have asserted to the Court that Koessler was saying one thing to you and another thing to Nicht.

A. I don't know what he was saying to Nicht, I know what he was saying to us.

Mr. MOORE: If I may be heard a moment? The scope
2899 and length of the cross-examination is a matter solely within your Honor's discretion. Throughout the course of this proceeding this attorney has continually extended cross-examination, in each instance, hours and hours and hours beyond the scope of the direct. We have been told time and time again that there were fifteen minutes more and we went for two and three hours more and a day more. Now, as it must to all things, an end must come, he is back where he was yesterday, back at 1955, asking the same questions. Must we sit for days at a time and put up with this?

The COURT: No. This is the last day, you can make the most of it. If the case is not finished, it will hang in the balance. I can't tell you even remotely when you can come back. I can tell you that my future is packed with other matters
2900 well into the fall. So govern yourselves accordingly. This is the last for this season.

Mr. BERNSTEIN: Counsel for NEA offered N-12 in evidence—

The COURT: Let me ask you; what possible thing could this gentleman possibly add to what he has given you all day yesterday, I guess part of the day before and this morning? I think this man, if he isn't virtually exhausted, should be. Is there any new points?

Mr. BERNSTEIN: There are new points, your Honor.

The COURT: Let's have one. It would be refreshing to have one new point, even if it isn't a good one.

Mr. BERNSTEIN: The new point is elaboration, clarification of some of the printing practices in the business.

By Mr. BERNSTEIN:

Q. Was NEA and King in virtually the same kind of business?

Mr. STEVENS: That certainly is repetitious. If that is new—

Mr. BERNSTEIN: Do you stipulate they were not?

2901 Mr. STEVENS: I will stipulate nothing with you, not even the time of day.

The COURT: Please. I know all about that. I know about the readyprint that he relied on. I know that King had some readyprint, he had other things beyond readyprint. I have heard about it, if that is your point. Basically, I know that NEA's bread and butter was readyprint.

By Mr. BERNSTEIN:

Q. How many syndicates did you mention yesterday, Mr. Anderson, sell printing?

A. The Chicago Tribune Syndicate; United Features Syndicate; King Features Syndicate; are active in the field. Once in a while somebody else may get in.

Q. Did you ever complain to Mr. Koessler that Nicht was not adhering to the agreement that was made at the Beverly Hotel?

A. We complained to Koessler that price-cutting was still going on. Our complaint was about why, how he could have these kind of prices that appeared to us he had, in making our complaint to Koessler.

Q. What, if anything—this is after the Beverly meeting—what did Koessler say to you?

A. I don't know what he did about it.

Q. Did you ask him to do anything about it?

A. No. I asked him to do what he could to fix up the price, if the price structure was wrong, if that was why we were getting into so much trouble.

Q. Did you ask him to have Nicht adhere to the Beverly agreement?

A. No.

Q. Did you communicate to Mr. Koessler that you were no longer going to adhere to the Beverly agreement?

A. No, sir.

Q. Did you communicate to Nicht that you were no longer going to adhere to the Beverly agreement?

A. No.

Q. Did you have any other contact with Nicht after the Beverly meeting?

A. No, sir. I think I said that before, too. I want to make it clear, we never saw Nicht. I haven't seen him since, Mr. Walker, nobody saw him, nobody in our organization saw Nicht since.

Q. You testified yesterday concerning P-42 in evidence and also P-43 in evidence, and you clarified the fact that Sioux Falls referred to in P-43 is not the Sioux City referred

2903 to in the first paragraph of P-42, is that correct?

A. I hope I did.

Q. Is there any doubt in your mind that P-43, the March 15, 1960 letter, was Mr. Koessler's response to you, to your letter of March 4, 1960, particularly with reference to the information contained in the last paragraph of P-42?

A. In the last paragraph of P-42 I tell him we have a cancellation from the Fargo, North Dakota Forum.

Q. In P-43 he tells you that Fargo and Sioux Falls go together?

A. Yes.

Q. So that P-43 is his response to your letter, P-42, is that correct?

A. Yes.

Mr. STEVENS: I think the witness testified yesterday that the portions with reference to Fargo is in response to the last paragraph.

Mr. BERNSTEIN: I submit that I can maintain my schedule—I made a commitment to the Court yesterday that I would be completed in two hours—if council would not be so
2904 helpful, and interrupting all the time—that is what lengthens the trial.

Mr. MOORE: Your commitment was to finish your case in two hours.

Mr. BERNSTEIN: I will be finished in two hours. When I make a commitment I adhere to it, without interruptions from counsel.

The WITNESS: Let me see if I can answer that. He replied that Fargo and Sioux Falls go together, that is what he was telling me. I don't know which of the instances he is referring to in the first two paragraphs.

By Mr. BERNSTEIN:

Q. In the first two paragraphs of P-43 in evidence Mr. Koessler says to you that when Frank Nicht returns to the office he is going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation. What policy was he referring to?

A. I don't know. I was complaining about the price-cutting.

Q. And he says in the last paragraph: "I suggest you destroy this letter." Did you?

2905 A. I don't know. I don't find it in my files so I would assume I did.

Q. One final point. Is it a fact—do you recall, see if you can recollect, that before Greater Buffalo bought International you had heard or it had been announced in the trade that International had started or was going to start a plant in Sylacauga, Alabama, and that you assured yourselves that this would be considered a plant in which NEA's printing could be done when the plant would be opened, in connection with your discussions with Walter Koessler?

Mr. STEVENS: Objection.

The WITNESS: Excuse me?

The COURT: I did not follow that. Did you?

The WITNESS: He tied two things together.

By Mr. BERNSTEIN:

Q. I invite your attention to your testimony in the Grand Jury on page 740——

The COURT: Look, you know the nature of it——

The WITNESS: I think I can answer the question. We heard rumors in the trade that International was going to put up a plant in Sylacauga. We heard this, we were busy trying
2906 to check this out. When we made that contract with Greater Buffalo, we assured ourselves that if there was a plant in Sylacauga, or wherever, owned by Greater Buffalo, we would have access to that plant.

By Mr. BERNSTEIN:

Q. That was discussed with Mr. Koessler sometime between August and October?

A. Yes, sure, it had to be, it is in the contract.

Mr. BERNSTEIN: No further questions, your Honor. I might state, as far as procedure is concerned, your Honor, the Government would like to ask this witness some questions concerning another charge of this case, concerning the tie-ins. That would be immediately after there is redirect, and we would go into the allegations of the complaint against NEA concerning the tie-ins of features and printing. For that part of the case the Government has Mr. Anderson as a witness and possibly one other witness, Mr. Gamble, or we might be able
2970 to get all of the testimony from Mr. Anderson, in which event we will be through in the time stated by the Government.

The COURT: Mr. Moore?

Mr. MOORE: I have just a couple of questions.

CROSS-EXAMINATION

By Mr. MOORE:

Q. Mr. Anderson, Greater Buffalo, during the period you have been testifying to, prior to and subsequent to 1955, did not have a readyprint service, as such, did they?

A. They had a little Chicago Tribune, they didn't have a readyprint then.

Q. They had one readyprint for the Chicago Tribune?

A. That is right.

Q. They were not in the readyprint business?

A. No, they were not.

Q. And this was true prior to 1955?

A. Yes.

Q. And it has been true subsequent to 1955?

A. Yes.

Q. Now, of course, on the larger runs, the runs that were not readyprints, the large runs from the large newspapers, prior to 1955 you found yourself unable to compete with Greater Buffalo, pricewise?

A. That is right.

Q. And that condition continued after 1955?

A. That is right.

Q. During this period prior to 1955, NEA was shopping around for printers from time to time, was it not?

A. That is right.

Q. And was some consideration given or some attempt made to interest printers in establishing a plant in the southwest at one time by NEA?

A. We tried to talk to World Color about such a possibility.

Q. And you found they were not interested?

A. That is correct.

Q. And you are still printing at Acme?

A. Yes, we are.

Q. And have printed there through the years?

A. That is correct.

Q. Acme also sells supplements, does it not?

A. Yes, they sell supplements directly.

Q. They sell both supplements and printing?

A. That is right.

Q. You continued to print with World Color Printing subsequent to the sale of Buffalo Color Press, did you not?

2909 A. Yes, we had runs there until 1956. We have had printing in there from 1957 to 1965, not color supplements, but we are still working with them trying to develop other types of color printing with World Color. We had TV guides in there, we hoped to make a readyprint out of.

Q. What was the reason for ceasing to print color comic supplements with World?

A. World Color decided they had a better arrangement in printing color comic books. They didn't want to get into the readyprinted business.

Mr. MOORE: That is all.

REDIRECT EXAMINATION

By Mr. STEVENS:

Q. Just for clarification, Mr. Anderson; are NEA Sunday color comics, as listed in N-6, included in any one of the three daily services sold by NEA, as reflected in exhibits NX1, 2 and 3?

A. No.

Mr. BERNSTEIN: Objection, not within the scope of the redirect.

The COURT: Overruled.

The WITNESS: No. The Sunday color comics are sold separately from the daily full services shown there.

2910

By Mr. STEVENS:

Q. And they are sold separately and individually?

A. They are sold separately and individually. They are syndicated.

Q. In your testimony yesterday, both upon direct and cross-examination, you said that NEA—I believe I quote accurately—needed breathing space from August 1955 on through the end of 1955 and early 1956. Would you explain what you meant by that term?

A. We start with the fact that Buffalo Color Press was down to the end of the line, it was not competitive, could not help NEA any longer. In the business with Greater Buffalo, we had—in competing against King and International—we had one printing advantage, that is we could assemble a long run of readyprint and our prices were then as good or better than King's. Now, when Greater Buffalo bought International we were concerned that King might also get that advantage from

Greater Buffalo by bringing runs up to Greater Buffalo and having the same price structure we did. In that case King would continue to have the advantage in the shorter runs and also be equal to us in the advantage we had in assembling the longer readyprinted runs. We were also concerned, of course, about International's pricing going to Sylacauga and Lufkin. We wanted to be sure we were competitive in those plants.

Q. You were also interested in whether or not you would be able to get into those plants?

A. Yes.

Q. Now, are these the subjects or some of the subjects that Mr. Walker wanted to talk to Mr. Koessler about, as one of his customers, the way he put it in exhibit P-51, dated August 2, 1955, do you know?

Mr. BERNSTEIN: I object to the leading.

The COURT: Overruled.

Mr. STEVENS: This is redirect.

The WITNESS: This was one of Mr. Walker's great concerns. I was his lieutenant.

By Mr. STEVENS:

Q. You also said at one or more points yesterday that you did not ask for a change either in Greater Buffalo's pricing to NEA or in International's pricing to King. Now, will you tell us how you square those statements with the breathing space explanation you have given us?

A. We asked Walter Koessler to make the King prices the same as ours or to give us the International printing schedule. Walter said that he had inherited a contract from International that made it impossible for him at that time to change the type of pricing structure that International had. I think I said the same thing, I tried to say it yesterday.

Q. Well, are you telling us that your concern for King's pricing was at least abated when you learned that International had a continuing contract and Koessler could not do anything about it?

Mr. BERNSTEIN: I object to the form, going into this witness's concern, feelings, and on the grounds it is leading.

The COURT: Overruled.

The WITNESS: We realized there was nothing Mr. Koessler—if what he was telling us was true—could do about the basis of the pricing structure at International.

By Mr. STEVENS:

Q. Mr. Bernstein asked you some questions with reference to P-36, Mr. Whitehead's sales report, dated January 19, 1956, regarding the General Newspaper Group, do you recall that?

A. Yes, I recall the group.

2913 Q. I believe he invited your attention, as he has frequently, to the third last paragraph in that sales report concerning taking current runs or current contracts away from King. Will you look at the exhibit and tell me if I am correct?

A. Yes.

Q. My question is, do you recall his inviting your attention to this language?

A. Yes, I do.

Q. Somehow my notes on your replies to questions at this point are not good. I would like to ask whether you told Mr. Whitehead what this memorandum or report says you told him?

Mr. BERNSTEIN: I object, your Honor. The record is clear, whether Mr. Stevens' notes are clear or not. The reporter has the transcript. We are going over the same ground we did yesterday.

The COURT: I don't know how you can complain of that. Overruled.

Mr. STEVENS: It is refreshing to have him say it, though.

The WITNESS: I never told—nobody told, to my knowledge, of any responsibility in NEA that under a new arrangement with Greater Buffalo we would not attempt to take current runs away from K.F.S. Whitehead was told, as were the other salesmen, there was now an arrangement whereby we would lay off King's runs.

By Mr. STEVENS:

Q. Did NEA ever have an arrangement with Greater Buffalo not to attempt to take current runs away from King?

A. No.

Q. Between whom was the so-called Beverly truce made?

A. Between King and NEA.

Q. And between them alone?

A. Yes, yes.

Q. You have just mentioned the fact that all of the salesmen were told to lay off then existing King runs and you made that statement yesterday. I am a little troubled because you also said, with reference to Messrs. Hanson and Weiss, that they didn't know about the Beverly truce. Did you mean and do you now—

Mr. BERNSTEIN: I object to any leading on this area, your Honor, as to what he meant.

Mr. STEVENS: I am asking a question.

Mr. BERNSTEIN: You are asking it in a leading form.

2915 By Mr. STEVENS:

Q. Did you mean to qualify your general statement when you spoke about Messrs. Hanson and Weiss?

Mr. BERNSTEIN: I object, your Honor.

The COURT: Overruled.

The WITNESS: What I meant was Weiss and Hanson didn't know about our Beverly agreement. They knew we—they were told there was an agreement, we would lay off the King runs. We didn't tell them specifically we had met at Beverly.

By Mr. STEVENS:

Q. Is there any doubt in your mind, as vice-president and business manager of NEA, that each of its seven salesmen in the field knew the substance of the Beverly truce, whether they knew it was arranged there or anyplace else?

Mr. BERNSTEIN: I object unless Mr. Stevens fixes a particular period of time. The witness yesterday, in examination on this point, he was asked about a particular date, and he said
2916 as of that date he didn't know whether the salesmen had been informed at that time or whether it had come up.

The COURT: He said he had an absolute feeling certainly that they were aware those accounts were not to be touched.

Mr. BERNSTEIN: Later on, your Honor—

The COURT: I don't think so.

Mr. BERNSTEIN: —he was unable to say at that time what knowledge the salesmen had.

The COURT: Do you want to make one final answer on that now, for the benefit of both sides?

The WITNESS: Well, none of the salesmen were told we had met with Nicht at the Beverly. They were told—we didn't have a meeting—we didn't call them together—they were told we were laying off the King runs.

The COURT: This was shortly after Beverly?

The WITNESS: Yes, shortly after Beverly.

The COURT: Until you felt, as I gather, that you were going to abandon any effort to comply?

The WITNESS: That is right.

2917 The COURT: I take it you abandoned efforts to comply because you were getting the short end of it from King?

The WITNESS: Two reasons, yes. We were getting the short end of it from King and we were getting squared away where we could be more competitive in the field.

By Mr. STEVENS:

Q. My notes show that Mr. Bernstein——

The COURT: Let me ask you one thing; you no longer needed the breather as bad?

The WITNESS: No, things were settling down.

The COURT: What had you accomplished that gave you a competitive position?

The WITNESS: Our situation was improved when we found out that the pricing at International was not going to come up to Greater Buffalo Press, and that we were going to be able to get our runs in Sylacauga and Lufkin. They were not improved

too much on International, which is still a very rough, 2918 tough, competitive fight with King, as far as International prices are concerned.

The COURT: All right.

The WITNESS: We were in better shape.

By Mr. STEVENS:

Q. My notes show that you told Mr. Bernstein that you were "pretty sure that you had an arrangement for the sale of Buffalo Color Press," that is, the sale of its assets, in August of 1955. What facts had been settled with Greater Buffalo at that time?

A. I don't recall exactly what had been settled. We had come to an agreement that something would be done with Buffalo Color Press. The major issues had to be resolved and the smaller ones. I can't give you a cut-off point there.

Q. Well, had you informally agreed upon a price for the physical assets in August of 1955?

A. No, I don't think so. That sort of came—we didn't price the plant yet.

Q. How about the inventories?

A. That normally would come later. That was a minor thing, we probably——

Q. This morning you mentioned you hadn't discussed the leases, who would assume or what anyone would pay for those?

A. No.

Q. Had you discussed or certainly had you settled in August of 1955 the payments to be made for the going concern value of Buffalo Color Press, turned over to Greater Buffalo?

A. No, we hadn't.

Mr. STEVENS: I think that is all, your Honor.

Mr. BERNSTEIN: No further questions, your Honor.

The COURT: I guess that is all, Mr. Anderson.

Mr. BERNSTEIN: I want him back again.

The COURT: We will take a little recess then.

(Thereupon the Court was in recess at 11:30 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 12:00 noon.)

Mr. BERNSTEIN: Before going into the tie-in phase of the case, perhaps—strike it out. Now, your Honor, this phase of the case refers to the allegations in Paragraph 28 of the complaint—

Mr. STEVENS: Wait a minute, are you now going into the tie-ins?

Mr. BERNSTEIN: Yes.

Mr. STEVENS: I thought you had some more questions of him?

Mr. BERNSTEIN: No.

Mr. MOORE: We have some motions.

The COURT: Let me get the recital of what Paragraph 28 is. You are going into the allegations of Paragraph 28 of the complaint?

Mr. BERNSTEIN: Yes, your Honor, and it has to do with the Government's charge that NEA has sold and presently sells comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper publishers shall not deal in the color comic printing service offered or sold by any competitor or competitors. In other words, the charge that NEA ties in the sale of its printing to the sale of the copyrighted features.

Mr. MOORE: It is my understanding, your Honor, that by stipulation of counsel this part of the case has been severed from the main case, and that the defendants whom we represent, Greater Buffalo Press, International,

Dixie, Southwest Color, are not concerned or a party to this phase of the litigation, that, in effect, there has been a severance to this charge and that this charge is now against NEA only and therefore we would no longer appear in this litigation nor participate in this phase of it.

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: That is my understanding. I thought that we would complete the case involving charges under Section 1 and Section 2 of the Sherman Act and Section 7 of the Clayton Act, and when that was closed we would proceed in an orderly manner to this.

Mr. BERNSTEIN: It is a minor matter, it is a technical matter.

2922 Mr. STEVENS: Let's have it that way. We would offer then, re-offer NEA's exhibit Twelve, which was identified yesterday and upon which Mr. Bernstein asked the right to cross-examine, a right which he has not exercised and can only be deemed to have been waived. That is the tabulation which I covered with Mr. Anderson.

The COURT: That is the summary?

Mr. BERNSTEIN: No objection.

The COURT: All right.

Mr. STEVENS: With that, NEA will rest its case on the Section 1 and Section 2 Sherman Act charges against it, and would like to renew the motions which we have heretofore made.

The COURT: The same ruling, I reserve decision on it.

(Thereupon defendant NEA's Exhibit N-12, previously marked for identification, was received and marked in evidence.)

2923 Mr. MOORE: If the Court please; the Government's case against the defendants we represent having been concluded, we would again renew our motions to dismiss the allegations of the claims made in the complaint, which were heretofore argued. I would also like—I assume on the motion to dismiss your Honor will reserve—I would like to put forth this for your Honor's consideration. That on the record now made in this case, I would now move to vacate the temporary injunction which still exists, as not modified by your Honor's order in February of 1962, and which does still restrict to some large degree the movement of printing from Wilkes-Barre to Sylacauga and to Lufkin, and which does quite seriously effect transportation savings that could be afforded newspapers lo-

cated in areas closer to Sylacauga and Lufkin. I think on this record that the vacating of this preliminary injunction, 2924 as it remains, the case for it is quite clear, because the injunction was granted on the Government's theory that Greater Buffalo was going to skeletonize or cannibalize, was the word, International and leave a mere shell, and frustrate any relief the Court might be moved to grant with respect to those facilities. Now, first of all, it seems perfectly clear now that the Government has not made out a case for relief, but even if they had, on the state of this record, contrary to the Government's fears has proven to be the fact. The undisputed record here is that International has not only been preserved, it has been built up into a very thriving entity. The working capital has been built up, it is a self-sustaining entity. The whole basis of this preliminary injunction falls in the face of this rec- 2925 ord, it seems to me, and I see no reason, valid reason, in law or in logic why the injunction should still stand.

The COURT: That calls for a response from Mr. Bernstein, which I am sure he has. I would like to go on with this witness and get him on his way, if we can. Why don't we view it this way; that you made your motion against the case and against the injunction, but let that hang in the balance for Mr. Bernstein's reply. I am not quite sure how I want that to be done. I don't know whether I want to hear that in oral argument today or have you brief those motions and motions to dissolve the temporary injunction, with a response from anybody concerned. I don't know at this moment whether I would like to have that, and perhaps some detailed argument at a later 2926 time after you get the record. I understand you have ordered the record. It seems to me that that is the best thing, rather than try to jam that rather important matter in today. So why don't we hold that in reserve? Maybe you can talk together, perhaps with me, and we can get a time a little later when you got the record, and you can comb it down so the argument can be as trim as possible. You certainly want to respond?

Mr. BERNSTEIN: Absolutely.

The COURT: Let's go on with the examination. You made the motions with the reservation of Mr. Bernstein to reply. Of course, we won't do it now. It may be that it will suit me better to have it briefed and argued in detail. All right.

Mr. MOORE: Does your Honor wish to set a time for briefs? We had rather envisaged that we would want the transcript, certainly, to prepare our briefs.

The COURT: That presents a real problem with Mr. 2927 Noel. He is in the middle of a command performance from the Second Circuit on an important robbery case, very lengthy, on which he has a deadline. Every moment he is going to have to devote to getting that out for the Second Circuit. Unfortunately, he also has some other stuff backed up. After that is accomplished that I know about, that is, the motions that started the other day where the transcript is being ordered in another criminal case.

Mr. BERNSTEIN: I was going to suggest, if I may be heard, if this is the time to do it, I was going to suggest that the Court schedule sixty days after each side has received the transcript from Mr. Noel to submit proposed findings and a final brief, that both submit at the same time, no reply, that the replies be done in oral argument following.

The COURT: Is that satisfactory?

2928 Mr. MOORE: Satisfactory.

Mr. STEVENS: Agreeable.

The COURT: When you send those in it will help me if you give me a letter that indeed this was the understanding, and I will schedule the arguments a reasonable time thereafter.

Mr. BERNSTEIN: One other mechanical part; I take it Mr. Moore does not intend to remain during the Section 3 count. If that is the case, I have a few documents that have already been submitted to your Honor, that your Honor took under advisement, the Nicht documents. I wanted to offer them, have a discussion about them. I don't want to take up the time of the witness, I would like to go on with the examination if we could reserve the right to do this in about five minutes after the testimony is over.

Mr. MOORE: I will be available.

Mr. STEVENS: I think in considering that, you might know that there are some things that we would like to discuss with Mr. Anderson in connection with the Section 3 case. You recall when we spoke about scheduling that at this time, I said that Mr. Karsch, who had done the preliminary work on it, that he was going away. He did, in fact, go for a week, came back, interrupted his vacation, and we just

haven't all of the work done. If it would be of any convenience to anybody, we would as soon have the noon hour to do that and then proceed promptly after lunch.

The COURT: All right. Is that satisfactory?

Mr. BERNSTEIN: Yes, your Honor.

The COURT: Now, these Nicht letters bother me largely because the exact nature of them has not become clear to me as to—I know what they are, I know what they have been characterized as by Mr. Raichle—I am not sure he is right nor you are right. Why don't you offer them, but on that point write me a letter brief as to why you now think they should
2930 come in here. When you do that, send a copy to Mr. Moore and Mr. Stevens, and then let them reply in ten days, and I will decide that.

Mr. MOORE: Maybe on some of these there may be no objection. For example, P-21 is a memorandum from Nicht to Mr. Ward Green.

The COURT: Why can't you sit down together and thresh that out, the things there is no objection to, but on the balance I would rather have you specify the things that are in dispute, why you think they should come in here, and give Mr. Moore a chance to write a similar letter to me, copies to all concerned, as to his position.

Mr. BERNSTEIN: Very well.

The COURT: I want to look at a few cases on that subject.

Mr. BERNSTEIN: May I proceed?

The COURT: Yes.

2931 EARL ANDERSON, called as a witness in behalf of the Government, and having been previously duly sworn, resumed and testified as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Now, Mr. Anderson—

Mr. MOORE: I take it now we are started on the case against NEA, at this time my appearance will be withdrawn?

The COURT: All right.

Mr. STEVENS: I would like an opportunity to speak to Mr. Anderson over the recess before we proceed.

The COURT: Do you want to talk before this begins?

Mr. STEVENS: It makes no difference. I am perfectly will-

ing to have him proceed now. I thought when I spoke before that it might be expeditious at this time if we recess and then went forward with it this afternoon, but I have no objection.

Mr. BERNSTEIN: I think we might be through by one o'clock if we proceeded with this phase of the case.

2932 By Mr. BERNSTEIN:

Q. Mr. Anderson, I show you a memorandum that you sent to Mr. Walker on August 24, 1955, with reference to the Gary, Indiana Post Tribune, marked P-142 for identification. Have you had a chance to read that document recently, Mr. Anderson?

A. Yes, I have read—looked at it recently.

Q. Does this fairly summarize the facts contained in that memorandum; that in August 1955 NEA quoted a price for a comic supplement that included the rights to seven comics at \$27.50 per week, is that correct?

A. Yes, that is right. Of course, that was never consummated.

Q. I will give you a chance to explain. I want to see if this method hastens it along, rather than reading the whole document.

A. Yes.

Q. And that if those seven comics had been priced separately, the copyrighted rights to the comics would be \$40.00 a week, is that correct?

A. If they were priced separately; that is what the salesman said he would like to get.

Q. King got the business, is that correct, King Features?

A. King Features got that business.

Q. Do you know which features were used, were NEA features used when King got the business?

A. Did we sell NEA features when King got the account? The report doesn't say and—

Q. Do you know?

A. I don't know.

Q. Can you tell me this; was it customary to quote a unit price, including features, when you were competing with King for an account?

A. We made a package. A readyprint is a package. We made a package of the NEA comics and printing into one offer.

Q. That was done quite frequently, is that correct?

A. This is the nature of the business, largely.

Q. This is typical of the way you were submitting bids, is that correct?

A. The typical way we made bids was to make a readyprint package. I don't think it is typical if the comics were priced separately, no.

Q. Let's get at the method by which you priced your comic features. Will you describe that to the Court?

A. The smaller newspapers particularly, but all newspapers are offered comics by a great many different syndicates. They buy some of them. After a while they know in each town about what the comics should be worth. By buying five or six comics he knows he has been paying \$5.00 or \$4.00, and each town has got in mind what that city should pay for comics. Now, this doesn't set a definite price on that particular town because the publisher may put a higher value on one particular comic than another. If he thinks Barney Google is good he may pay another dollar for it, if he doesn't he won't pay anything for it. But, generally, the public knowledge of the field, of what he has been paying, sets a value on the comics.

Q. Does NEA maintain a list price as to what the comics are worth, are to be charged in particular locations?

A. We supply our salesmen with a list that shows generally what the comic price is per circulation. This doesn't apply to each particular situation, it is not a fixed price.

Q. Does the salesman have flexibility to determine, to charge more or less?

A. The salesman on the field, in conjunction with advice from the sales manager. The salesman on the field is the one who finds—determines what the pricing is in that city.

Q. Does NEA have for its own internal purposes a price it regards as the price below which it won't accept for features?

A. No, we don't. We have to—most of the comics divide 50% with the artist and there is a point beyond which you don't normally go. We don't have a base or a top price.

Q. What was meant in your letter when you said if those comics were bought separately by the Gary, Indiana Post Tribune they would be priced at \$40.00, how did you determine that?

A. We had gone in and made a readyprint arrangement, engineered a readyprint in which we put a package of the NEA

comics in it and the advantage of the makeready savings, and offered this to him at a certain price. This became a highly competitive situation. This is the price we arrived at for the ready-print package, which we thought we could sell it at. We reduced the price of the package. Now——

Q. In reducing the price of the package in order to get the complete readyprint business as against King, what you did was that you computed your printing price, you computed your transportation, and then you reduced the price of the comics so that the total price for the whole package would be cheaper, is that correct?

A. For our internal figuring, this was the way we arrived at what the margin is in this particular section. In most instances the publisher——

Q. The publisher got the one single unit price?

2936 A. In most instances.

Q. In this instance?

A. I assume so from reading the report.

Mr. BERNSTEIN: I offer P-142 in evidence.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon Plaintiff's Exhibit P-142, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Now, I show you P-143 for identification, Mr. Anderson. P-143 is a memorandum from you to Eli Minton, dated December 3, 1958, with reference to the Alexandria, Louisiana Town Talk. That is a newspaper?

A. Yes, Town Talk is a newspaper.

Q. Eli Minton, you referred to him earlier in the testimony, but just to clarify, what was he doing at that time?

A. He was our southwestern sales representative.

Q. Have you had an opportunity to read P-143 immediately before taking the stand here, recently?

A. I have read it recently.

Q. And I invite your attention to—I ask you this
2937 question, is it a fact that you instructed Mr. Minton to compute a price for the Alexandria, Louisiana Town Talk for the printed supplement by adding \$2.00 a thousand for the comics, but cautioned him to avoid making the quotation in a form that would permit the newspaper to get the

comics for \$2.00 a thousand, and give the printing to someone else?

Mr. STEVENS: I object, your Honor. I think we are introducing these exhibits, they speak for themselves, and I don't like to have a predigested interpretation. I believe the instrument offered ought to talk for itself.

The COURT: Why don't you offer that as a pertinent document?

Mr. STEVENS: I have no objection, your Honor.

The COURT: Let's have it marked in evidence, and then we will go on with the elucidation on it, if need be. You have to realize, Mr. Stevens, I have become aware there is a jargon in the business, there is trade practices, that to me would mean

nothing. The same as Mr. Anderson said, I think, some of the lawyers jargon means nothing to him. It may be that I will need some explanation to intelligently read that letter. To that extent, I want it done

(Thereupon Plaintiff's Exhibit P-143, previously marked for identification, was received and marked in evidence.)

The COURT: Now, I take it, Mr. Bernstein, that some of that, except for your study, to you would normally be doubtful as to intent and purpose, and you are now going to try to ask the witness to enlighten me in those areas?

By Mr. BERNSTEIN:

Q. Was that the purpose of your memo to Eli Minton, that you were trying to instruct him that in submitting a quotation to the newspaper, and for the printed supplement as a package, that he could compute the price by adding \$2.00 a thousand for the comic feature rights but that you wanted to caution him to avoid making the quotation in a form that would permit the newspaper to be able to ask to buy the comics for \$2.00 a thousand and give the printing to someone else?

A. What we have here is a readyprint comic package. Mr. Minton—what I outlined in the memo—in selling the readyprint comic package already had a profit in the printing of this section.

The COURT: Your price necessarily included the printing?

The WITNESS: If we don't—yes, that is right, that is part of the package. If we don't get the printing we lose the profit we had figured here. So I applied the printing price, the profit we had, against the comics another \$2.00 and it comes out all right. If he don't get the printing, I have no profit left in the printing,

I can't sell the comics for \$2.00, you see. I never offered the comics at \$2.00, I never priced them at \$2.00, because the profit that I had in the printing run took care of the cost of the comics.

I had a good deal more than \$2.00 per comic in this printing arrangement. Have I made that clear?

By Mr. BERNSTEIN:

Q. Not quite. I am trying to ascertain whether—is this the fact; when you were determining what profit you were going to make on the printing, you determined that if you were going to get the printing then you would take less for the comics in order to make it more attractive?

A. This is a package deal, I was getting as much for the comics.

The COURT: He didn't say that. It is like a round trip ticket. You get a one way ticket and it costs more than a return.

The WITNESS: That is right. I want to make it clear, we were not withholding these comics, if he wanted to buy them he could buy them at a fair price.

Mr. BERNSTEIN: I invite the Court's attention to the next to last paragraph of—

The COURT: All I can say is his explanation seems to me very logical. In other words, you made a price for the whole thing?

The WITNESS: Yes, sir.

The COURT: But if somebody wanted to split and grab the goodies without the meat for you, that wouldn't go?

The WITNESS: In the readyprint arrangement I had a profit for the comics I thought was fair, and if he wanted to buy only the comics, he buys them at a fair price.

The COURT: What is wrong with that explanation? If that is acceptable to the Court, what is wrong with it?

Mr. BERNSTEIN: You mean legally?

The COURT: Yes. I am talking about the fact that this is a package deal, that you can't splinter off a piece of it, take the good part without taking perhaps the not-so-good part.

By Mr. BERNSTEIN:

Q. Mr. Anderson, would you sell the—let's take a situation where the newspaper buys the package from you. Now, he has NEA features in that he is using. Now, is it a fact that readership interest develops in that feature so that the newspaper is anxious to continue on that NEA feature. is that the fact?

A. I would hope so, yes.

Q. Is that—

A. That is why he buys them.

Q. So that if he wants—he has the license to publish them, does he not?

A. Yes.

Q. And so that having the license, if he then went to some other printer, Acme, Eastern, Greater Buffalo, and he said to them, "I have the right from NEA, I have the copyrights, you just give me a price for the printing", and they gave them a price for the printing which when added to the price he would have to pay you for the features would give him a cheaper price than the total package that you were offering, he would be free to do that, would he not?

A. We have never withheld any NEA comics from a newspaper regardless of whether they bought the printing from us or not. He is free to go to another publishing plant. He can't, in most cases, find as good a makeready. This is our business, to give him a readyprint section he can buy cheaply. He may go to another printer.

2943 Q. If he went to another printer—if the Alexandria,

Louisiana Town Talk, having had the license from you for the features, went to another printer and got a printing charge that was the same price as the printing charge you computed, what would you charge him for the comics?

A. I would charge him the fair market price. Understand, I am not getting \$2.00 per comic under this arrangement. In the package arrangement I am getting more than \$2.00 per comic.

Q. Excuse me. You are either getting more than \$2.00 per comic and less for the printing than you have included on P-143, or you are getting more for the printing than you have on P-143 and less for the comics?

A. This is a package—

Q. You can't have it both ways.

A. I don't know which came first. I don't agree with the interpretation you put on it.

Q. Let's explore that.

A. The matter of the fact is that if Alexandria, Louisiana bought this package, readyprint package from us, in our total margin we had enough in this instance, to give us a fair price for the comics if we added \$2.00 per comic. If he bought them separately, then we wanted more than \$2.00 per comic because we are getting it here, and the market in Alexandria,

2044 Louisiana, should be more than \$2.00 per comic. Now if he wanted to go to another printer and buy a section he was free, he could have all the NEA comics he wanted at fair price.

Q. You told Mr. Minton in the next to last paragraph: "On basic cost on this section is \$10.16 per thousand." Did you mean that was the price you had to pay Greater Buffalo?

A. Where was that?

Q. The next to last paragraph.

A. Page two?

Q. No, page one.

A. The basic cost of this section was \$10.16 per thousand.

Q. Does that mean that was the price you had to pay Greater Buffalo Press?

A. That was the price we paid Greater Buffalo Press.

Q. All right. That is whether he took the comics or not, is that correct? I will withdraw that.

A. If it was a readyprint run the price was \$10.16. We couldn't buy the section with all the makeready for \$10.16. We already paid for the makeready.

Q. The second sentence says: "The page change at \$10.00 adds another forty cents per thousand on the basis of a 25,000 run." Does that mean that the Alexandria, Louisiana

2045 Town Talk wanted the makeready that you had but he wanted to make a change for a 25,000 run and that change would add another forty cents a thousand that you would have to pay Greater Buffalo?

A. That is correct.

Q. You say: "This makes our total printing cost F.O.B. Buffalo \$10.56 per thousand. I believe this is a very good printing cost, and should give you some maneuvering room. The minimum should be \$12.65 per thousand, including the one page change."?

A. Right.

Q. You were saying that the minimum profit you wanted to make was the difference between \$10.56 and \$12.65, is that correct?

A. Yes.

Q. You say—

A. I had some previous makeready to absorb, but I will go along with that.

Q. You say: "This would give us a margin of \$2.00 per thousand, or \$52.25 on the run of 25,000. You might come to this for the printing rate, and then add around \$2.00 per thousand for NEA comics in the section, if we do the printing. You would want to keep your guard up on offering NEA comics this cheap, aside from the printing deal, so you don't get boxed into selling NEA comics at \$2.00 if the printing goes elsewhere."

2946

A. I think I explained that adequately.

Q. Yes.

A. Did I make it clear?

Q. Yes, thank you. Now, was it customary to compute the quotations to the various newspapers much along these same lines?

A. This, where I told him about the \$2.00 per comic, was not customary. The computation that you had before you came here, that is about the way we did it, figured the printing cost, the sales cost, what we have invested in the way of other expenses, and come up with what we think will keep us in business.

Q. You determine a profit you want to make on that particular run, is that correct?

A. Sure.

Q. You set a goal as to what profit you want to receive from that newspaper?

A. This sounds like we were handing something to the publisher, we have made a goal, he should live with it. This isn't the way business is done.

Q. How is it done?

A. It is competitive.

Q. How do you do it?

A. In case of a readyprinted section we go to the newspaper and we say, 'Look, we can do some engineering for you on this section, save you money on a make-ready price, give you an economically priced section. Now then, we have to determine what——

Q. That is what you are telling the newspaper?

A. Yes.

Q. I am talking about what you do.

A. I would have to say this to get to the point. We have to get an agreement with him as to what comics he would like to

have in his section. Once we have some sort of agreement with him that that is what he would like to have, we go back and find out our printing cost on that section with makeready it will fit into.

Q. What do you do about pricing, arriving at the profit?

A. We try to sell it at whatever price we feel is a fair one, we could get for it. This is determined by the number of NEA comics in there, and by other competitive factors. Your publisher has to have a good deal otherwise he will buy a TV section or Showtime section for the weekend supplement. But the basic mechanics, I would say we figure out finally what the cost of this section is going to be, what the baggage rate would be, the shipping rate, and then we say, "How much profit shall we have on the section?" We usually relate that back to a price per thousand for this particular comic section.

Q. How, if at all, do you take into account the value of the copyrighted feature, or don't you?

A. Sure, this is basically—yes, we take in the value of the copyrighted features, for the NEA copyrighted features. I make it clear we have no control over the other syndicates.

Q. I am talking about NEA features?

A. NEA features, yes.

Q. How do you take into account the value in determining your profit? You say, "I want to come out with so much profit. I will give them these features, I don't have to worry about how much I am getting for the features, all I am interested in is the profit."

A. No, because the artists are entitled to their share of what we make.

Q. How do you do that, how do you do that, how do you arrive at the price?

A. In our operation we pay, in the normal arrangement with the artist, we pay him 50% of sales after certain expenses are taken out, the matting and so forth. Now, in the case of ready-printed sections, we add—we divide whatever we have in the section by the number of comics, the profit we have in the section, by the number of NEA comics in there. Each comic artist gets his, basically, 50% share. In our operation, the profit is put on—for the benefit of the artist—the profit we make on selling a section is all put on the comics, so

we don't question if the comic artist—if we are paying them fairly. We have to pay them fairly because of the fierce competition for these people, they can go to other syndicates or go into illustrating work or——

Q. So then you are computing the profit only on the copy-righted features, you are treating the price that you have to pay Greater Buffalo as the price for the printing and you are earning the profit on the features that you share with the artist, you are also earning whatever payment Greater Buffalo Press makes to you for that account, is that correct?

A. On new business, yes.

Mr. BERNSTEIN: Now I offer P-144 in evidence.

Mr. STEVENS: No objection.

(Thereupon Plaintiff's Exhibit P-144, was received and marked in evidence.)

Mr. BERNSTEIN: I offer P-145 in evidence.

2950 Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-145 and received in evidence.)

Mr. BERNSTEIN: I offer P-146 in evidence.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-146 and received in evidence.)

By Mr. BERNSTEIN:

Q. Now, I ask you if you have had occasion to read P-144, P-145 and P-146 in evidence recently, Mr. Anderson?

A. Yes, I have read these.

Q. And——

Mr. STEVENS: I think you can eliminate one question; I am sure he has read these exhibits recently.

Mr. BERNSTEIN: Thank you.

By Mr. BERNSTEIN:

Q. These three exhibits refer to the Albuquerque Journal, is that correct?

A. That is correct.

2951 Q. The Albuquerque Journal—is this correct, did the Albuquerque Journal have a circulation of about 61,000?

A. Yes, that is correct.

Q. And Acme was doing the printing for that account at that time, December 1, 1956?

A. That is correct.

Q. And that King comics were being used in that paper, is that correct, in the readyprint that Acme was selling, is that correct?

A. I don't think—I don't know if it was a readyprint color comic supplement, I believe it says King comics were being used, yes.

Q. I invite your attention to the next to last paragraph in which you say: "At the present time, the twelve-page section is made up entirely of King comics——"?

A. That is right.

Q.—"And by the time you have picked 23 or 24 King comics, you have really gotten down to the bottom of the barrel. You may want to sweeten your offer with two or three NEA Sunday comics not having daily continuities." Is it a fact that the offer was made, that is, P-145, Mr. Minton made the offer to the Albuquerque Journal?

A. That is right.

2952 Q. And he did say on page 2 in the fifth from last paragraph: "As a further saving for you, we will include in the printing cost of both the ten and twelve-page sections, any or all of the NEA Sunday comics: Little People, Kevin the Bold and Tom Trick. These are all excellent comics and enjoy a wide distribution." Then he describes the features and then he says: "I sincerely believe that these would make valuable additions to your section. Proofs are enclosed." So that offer was made to the Albuquerque Journal. And then——

Mr. STEVENS: Is this a comment or what?

By Mr. BERNSTEIN:

Q. Is there anything else?

A. Yes, that offer was made to the Albuquerque Journal.

Mr. BERNSTEIN: I offer in evidence P-147 and P-148.

Mr. STEVENS: No objection to either.

(Thereupon documents referred to were marked Plaintiff's Exhibits P-147 and P-148 and received in evidence.)

2953 The COURT: Mr. Bernstein, that Albuquerque Journal offer, what do you contend is wrong with that under the law?

Mr. BERNSTEIN: Well, the point is that the feature, having a copyright, and the newspaper not being able to get it anywhere except from the copyright holder, once he develops a certain readership for that comic, why then he has such a demand for

that comic he wants to continue it. If he wants to solicit another printer——

The COURT: You mean he needs the comic, he's got to have it, and then you say NEA was beating him over the head with the printing, "You can't have it unless you have that too"?

Mr. BERNSTEIN: That is right.

The COURT: They say, "You can have it at a price if you ——"

Mr. BERNSTEIN: They are relating the price to the printing.

The COURT: They didn't force the printing with them, they said, "If you give us the package, you can have this price." You contend that isn't so?

2954 Mr. BERNSTEIN: I did not express myself clearly. I would say this; that the legal effect of the tie-in runs the gamut. At one extreme there is the situation that Mr. Koessler described that King was doing to him; he said, "If they do the printing with you I won't give them the features, if I do give them the features I will raise their price so much and jack it up, hit them over the head, and if you want peace you better give me so much per week." That is the one extreme. The other extreme or the other side of the coin is where the printing and the features are sold together as a package, so that the newspaper is not in a position to buy the comic features at the same price that NEA is willing to take for the features unless he buys the printing, and since he can't buy it from anybody else, NEA has the copyright to it, and since he has developed a
2955 readership interest for it, if he wants to seek to get the printing done somewhere else, he doesn't have the opportunity to do it because the price that newspaper is paying is included within the printing price. It is true that NEA is not refusing to sell him the features, he is going to be able to get them, but the price is going to be higher.

The COURT: Now, you have stated a lot of ifs to bring that picture into focus.

Mr. BERNSTEIN: All of the facts are in evidence from this witness' testimony.

The COURT: I don't want to go into that. I want you, sometime, to point those facts out.

Mr. STEVENS: If I could make one comment, your Honor. It seems to me that instead of having a conjectural theorization of the wrongs which may flow from this, if Mr. Bernstein feels

somebody was hurt, this is the kind of thing that ought to come out of a man who has been hurt, not a speculative argument.

The COURT: Well, I wanted to find out flatly what you contend was wrong, because I thought maybe there was some formula than I considered it to be, and you say, assuming you have proven a number of facts, the ifs have been proven, that flows. I don't need further discussion.

Mr. BERNSTEIN: Thank you. Now, this phase of the case will take a little while. Would you like to recess now and give Mr. Stevens the opportunity to confer with Mr. Anderson?

The COURT: Are those all the exhibits you expect to show Mr. Anderson?

Mr. BERNSTEIN: No.

The COURT: Give them all to him.

Mr. BERNSTEIN: They have a copy of these.

The COURT: You have told them——

Mr. BERNSTEIN: I have told them which exhibits, he has read them, and there will be a few more. This area that I am going into will take some time for development.

The COURT: All right. I suppose you would like a break. We will do that. Two o'clock.

(Thereupon the Court was in recess at 1:00 p.m.)

2958 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

EARL ANDERSON, having been previously duly sworn, resumed and testified further as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Mr. Anderson, before proceeding to another subject let me see if we can't clarify one point about the sale of your readyprint. With respect to N-5, the comic section printed for the Suffolk News Herald, this is a readyprint sold to a lot of newspapers with small circulations, except for the masthead change?

A. That is right.

Q. Let's take the Suffolk News Herald. Does that newspaper have any exclusive right in an area around Suffolk?

A. I don't know if the contract covers that.

Q. Let's talk about general business practice with respect to your sales of readyprint. Is it customary to give a particular

newspaper that you sell the readyprint to some protection as to exclusivity in his area, that is, not giving the readyprint to another newspaper in the same area?

2959 Mr. STEVENS: I object to that.

The COURT: Overruled.

The WITNESS: Yes. It is customary in selling features that they get the territory—Suffolk wouldn't want another paper to have the same features that they are selling, naturally. They can go and buy additional printing if they want, they can get another section, if they like.

By Mr. BERNSTEIN:

Q. From NEA?

A. Sure. In this instance we don't have the comics for another section. They can get comics from another syndicate.

Q. When you have the makeready made up, you are selling them to a number of papers under the same makeready charge, you are doing this as to newspapers that are not in the same area?

A. In the same city or same area, yes.

Q. Not in the same city?

A. No, we wouldn't sell the comics in the same city. If we had other comics available we would sell them.

2960 Q. Now, inviting your attention to another subject.

P-147 and P-148 in evidence, these documents relate to the Southeastern Color Comic Group among other things, do they not?

A. That is right.

Q. Now, is this correct; that the Southeastern Comic Group was a group of small newspapers in the southeastern United States that had a circulation of about 25,000 more or less, is that correct?

A. Each newspaper—I think that would be the larger end of the sale for each newspaper.

Q. Some of them went down as low as what?

A. 10,000, 20,000.

Q. And do you know when that group was organized?

A. I would like to give you the background on this, if I might. I participated in it.

Q. Excuse me—

A. May I do this?

Q. Excuse me. I will give you the opportunity for the background but first I would like to get some background facts out

of the way before going into the details. Do you know when, approximately when, the Southeastern Group was organized and how long it is in existence?

A. It was organized, I would say, in the late forties or 2961 early fifties.

Q. And ultimately there came a time when NEA sold them copyrighted features, is that correct?

A. That is what I would like to tell. Yes, NEA did sell them—

Q. Approximately what time was that? What period was that?

A. NEA sold them at the time the group was organized and formed. We participated in the formation of this group. These papers had an advertising man come to them and suggest it would be good for these papers to get together as a group and sell national advertising, instead of having 10,000, 20,000 individual circulation they would have a total circulation of 200,000 or something like this, to offer to national advertisers, to sell in a group.

Q. And that national advertising was included in the comic color supplements?

A. And the advertising they were able to sell was included in this one printing group. When they decided they wanted to form this group—these were papers, about ten of them—some of them had printing contracts for readyprint with King Features, some of them had printing contracts with NEA for readyprint. In getting together—we went down to help them—
2962 these newspapers found that they had a problem in getting started because they had two suppliers for their printing. If they were going to have one group they wanted to put it in one plant, have one makeready, so that the sections would be the same for all papers. NEA held the printing contracts for about half of the papers and King Features held the contracts for about the other half. Somebody had to give in if they were going to have a common printer. NEA—these papers were—most of them were service customers of ours, we were anxious to do what we could for them, we helped them form the group. We gave up the printing contracts we had in order to make this group successful. King Features refused to give up their printing contracts, so the only thing for the group to do if it was going to get going was to give all the printing contracts

to King, and King got the contracts for printing all of these newspapers.

Q. For how long a period did King have that contract, approximately?

A. Now, King held it for the duration of the contract they wrote at that time.

Q. When you say "at that time", you mean around 1948?

A. In that area.

Q. Somewhere—

2963 A. In that area. At the same time these newspapers had another problem, that was obtaining features to fill this eight-page section they proposed to start. They called in all—not all of the syndicates—I was down there, I recall the Chicago Tribune representative was there, the representative from United Features was there—

Q. Excuse me, are you concentrating your remarks now to the period of time before Atlantic Features was formed or after or both?

A. This was prior to the forming of Atlantic Features.

Q. Please limit your discussion to up until the time Atlantic Features was formed.

A. Up to the formation of Atlantic Features.

Q. Go ahead, please.

A. So these syndicates came down and we had meetings with them and decided which features they wanted. They asked for bids on the features they wanted. As a result of that, Chicago Tribune, I think, sold about three features, we sold eight. The pricing was all quite competitive. I think Chicago Tribune and United Features were in the twenty, twenty-five cent area. We had more comics than the rest, we sold at eighteen cents per thousand for the whole group. When the contract with

2964 King—King didn't sell their comics to the group. They sold, I believe, Blondie individually to each newspaper to get it into the section.

Q. Was the group an incorporated group? What was the name of the group?

A. This is an interesting thing. One of the founders—the newspapers were in this—one of the founders told me that this was formed as a non-profit organization. I don't understand how this could be, but this is what he told me. Whether it still is, I don't know.

Q. Do you know what the name is? What did you call it?

A. Southeastern Color Comic Group.

Q. Okay.

A. Now, then the printing went over to Newport News. They started printing for the whole group. Jack Hornady came to Southern Color Print. He formerly had been a salesman for King and he left and went to Southern Color Print. He got an exclusive printing contract with Southern Color Print—

Q. Excuse me—

A. He also became a sales agent for Hall Syndicate. Hall is one of our competitors, they have Sunday comics—

Q. Excuse me. Was Southern Color Print owned by a newspaper in Newport News?

A. Southern Color Print, yes, was owned by the Newport News News; this was Commander Bottom, and Bob Hall was the general manager.

Q. Did Bob Hall have any relationship to the Hall Syndicate?

A. Not that I ever heard of. Did I use the right name? Robert Smith, I am sorry.

Q. Robert Smith?

A. He was general manager.

Q. Of Newport News and also of Southern Color Print; and Southern Color Print was engaged in what business?

A. Southern Color Print was a printer.

Q. Of color comic supplements?

A. Yes.

Q. Anything else?

A. I don't know.

Q. This is prior to the time of Atlantic Features being formed. Southern Color Print was—strike that out. Initially, King had the contract with Southeastern Color Comic Group and the runs were being printed at International in Wilkes-Barre, is that correct?

A. I assume, yes.

Q. And Hornady was an employee of King, is that correct?

A. Yes, he was. He was a right hand man to Mr. Nicht.

Q. In December of 1955—does that conform with your 2966 recollection—he left King and went down into Newport News area?

A. I can't say it was 1955. It would be in that area.

Q. And was it at that time that Southern Color Printing began doing the printing for Southeastern Color Group?

A. I am not quite clear on that.

Q. In any event, there was a period of time—was NEA selling features to the Southeastern Color Comic Group while King had the contract and was printing at International?

A. Yes, from the inception of the group. At that time we were selling eight NEA Sunday comics to the group.

Q. After King lost the contract what features were sold to the Southeastern Color Comic Group?

A. For the printing? After it lost the contract for the printing?

Q. That's right.

A. We continued—I am sure of this—up until the time of the arrival of Jack Hornady on the scene to sell eight NEA Sunday comics to the group.

Q. Did King continue to sell any color comics to that readyprint printed by the group?

A. I'm not sure. I think they continued to sell Blondie.

Q. What the Southeastern Color Comic Group was having printed at Southern Color was a readyprint that consisted of identical comics with identical advertising, so that the advertisers could be secured of a larger circulation than they would if they went to one paper?

A. That is correct.

Q. And all of these newspapers that comprised the Southeastern Color Comic Group were getting the benefit of the readyprint, the one single charge, is that correct?

A. Yes, that is why we helped them form the group.

Q. NEA made available to the Southeastern Color Comic Group eight comic features at a very special price?

A. I don't understand your point, "very special price." It was not—we sold ours at eighteen cents per thousand for a group of eight comics. As I recall, United Features sold three for around twenty cents per thousand. Chicago Tribune, I don't know what they came in at, about twenty-four cents a thousand. We were—considering the volume, we were in the range. This gave us one sale of 200,000 at least of these eight comics. Now, whether—this was a negotiated rate, I don't know it was what you would call a special rate.

Q. Now, did NEA also advise the Southeastern Color Comic Group that those same publication rights were available to any other newspapers that would become a member of the 2968 Southeastern Comic Group, at the same rate, providing NEA hadn't given those features to another newspaper in that particular area, is that correct?

A. If the territory was not sold out, yes.

Q. What do you mean?

A. If we had not sold the paper, a newspaper, and they had the territory, the right to this comic for this territory.

Q. If a newspaper wanted to join the Southeastern Color Comic Group and it was printing in an area where NEA comic features had not been sold to another newspaper, then Southeastern—then the publication rights to NEA features would be available to that member on the same basis it was to the others?

A. We told Jack Hornady he could not sell our comics.

Q. We are not talking about Hornady, we are talking about before Atlantic Features was formed. Is this correct; that NEA made available to the Southeastern Color Comic Group the right to give any other newspaper that wanted to join that group the opportunity to obtain NEA publication features at the same eighteen cents per thousand, as long as there wasn't another newspaper in that area that already had the same features? That NEA had given them some exclusivity?

2969 A. Would you repeat the question?

Mr. BERNSTEIN: Would you read the question, please?
(Thereupon the last question was read by reporter.)

By Mr. BERNSTEIN:

Q. I will make the question shorter.

A. The contract provided that any additional papers that would be added, would be added at this eighteen cents per thousand.

Q. We are getting down to the period when Atlantic Features was formed, and my representation is that it was formed in an about December of 1955. Do you know whether that is—

A. That must be right. Mr. Hornady was president.

Q. Do you know whether Atlantic Features was formed by certain members of this Southeastern Group?

A. No, my understanding is that Atlantic Features was Jack Hornady's selling arm for Southern Color Print.

Q. You don't know whether the fact is——

A. I don't know if the papers had money in it or not.

Q. You don't know whether the fact is——

A. I know that he was the president of it, that is what I know.

2970 Q. Look at the last paragraph of P-147. You say: "Hornady and Bob Smith set up Atlantic Features while Hornady was still traveling for King. Southern Publishers put up from \$20,000 each, down, as token payments under an agreement which gives them an option to buy the Southern Color Print plant." Does that refresh your recollection?

A. I am afraid I have misled you with this report. Hornady and Bob Smith set up Atlantic Features while Hornady was traveling for King. This I agree with. I say: "Southern Publishers put up from \$20,000 each——", I didn't, I shouldn't have said put it in Atlantic Features. The report should have said they put it into the plant, into the Southern Color Print plant.

Q. Atlantic Features then became the exclusive sales agent for Southern Color Print, is that correct?

A. Yes, and for Hall Syndicate.

Q. For Hall Syndicate?

A. Yes, sir, in the south.

Q. Now, Atlantic Features bought publication rights from NEA, is that correct?

A. Southern Color Print—the Southeastern Color Group bought the features. Our contract was with the Southeastern Comic Group. Hornady tried to carry these over to Atlantic Features and we said no.

2971 Q. Did you ever sell Atlantic Features any publication rights so that Atlantic Features could offer a ready-print that would include NEA features, possibly Hall Syndicate features or something else; did you ever do that?

A. I think a few comics were sold to Atlantic Features.

Q. Do you know whether or not United Features Syndicate also sold Atlantic Features some feature rights when it was first formed?

A. When it was first formed? You may be interested to know that today Mr. Hornady—he was the southern agent for Hall, now he is the southern agent for United Features Syndicate, for one of our big competitors, the McNaught Syndicate, and

for Adcock. Those three syndicates have more Sunday comics than NEA does.

Q. How about Chicago Tribune Syndicate, did he also obtain feature rights from Chicago Tribune Syndicate, Atlantic Features?

A. He is not the sales agent for the Chicago Tribune. Whether he bought some—I don't know whether he bought for the Southeastern Color Comic Group through Atlantic or direct from Chicago Tribune. I believe there is still some Chicago Tribune features in that section.

2972 Q. Now, I want to make sure that I have your answer clearly. You testified today that Mr. Hornady is exclusive sales agent for United Features Syndicate, McNaught Syndicate and Hall Syndicate?

A. I went to the last issue of Editor and Publisher, the trade magazine and I find Atlantic, Mr. Hornady as president, is listed as the southern representative for McNaught, for United Features and for Adcock Associates.

Q. Exclusive representative or do they have other representatives?

A. This I don't know.

Q. All right. Do you know—this is my next question, a different question—do you know whether or not United Features Syndicate sold publication rights to Atlantic Features at about the time Atlantic Features was formed?

A. No, I don't know. I know——

Q. That's all right.

A. Let me say this——

Q. That's all right.

A. I'm sorry.

Q. There are many, many facts that I'm trying to get out, I am not debating, but they have to be in the record to the extent that you know about them. McNaught Syndicate,

2973 do you know—yes or no—do you know whether McNaught Syndicate sold publication rights to Atlantic Features shortly after it was formed?

A. No.

Q. Do you know whether Hall Syndicate sold feature rights to Atlantic Features?

A. No.

Q. Now, this is very important, we are getting down to the details of your relationship with Atlantic Features. Do you

recall that in April of 1956 you had a conference in the Waldorf Astoria Hotel—that is not in those documents, you will have to search your recollection for this—in April 1956 there was a conference in the Waldorf Astoria Hotel between you and Mr. Hornady and Robert Smith, at which time Atlantic Features requested from you the right to publish, to purchase publication rights for newspapers whom they would sell supplements to?

A. No. The date coincides, I believe, with the annual meeting of the American Newspaper Publishing Association but——

Q. Was that at the Waldorf?

A. Yes. I don't recall this meeting.

Q. Do you recall at about that time you agreed to provide them the rights as long as they were not already taken
2974 in that particular town?

A. I don't recall that at this meeting. You've got to look at the——

Q. Do you recall in October of 1956 you, with Mr. Borglund, took a trip down to Newport News—that isn't in the documents either, I am trying to get your independent recollection—you took a trip with Borglund to Newport News, you went to Robert Smith and Hornady, and at that meeting you asked Mr. Hornady to stop soliciting the sale of newspaper supplements to papers that were then being printed by NEA?

A. We were—what was the date of this?

A. October 1956 in Newport News.

A. I recall being—going down with Mr. Borglund. We were trying to suggest to him, I think, that this advertising group we set up was very helpful to these papers in the southeast and we could be more helpful to them if he would allow us, in the sections we printed, to include this advertising, and this is probably at this time, I would suppose, and told him that we would insert this advertising in any sections that we printed at no mechanical charge to the publisher, this would be open to everybody. At this meeting or another, I don't remember,

Mr. Hornady told me that he was interested in printing,
2975 not in the advertising, the papers could not have his advertising unless they bought his printing.

Q. Now——

A. If it was this meeting, I don't know.

Q. Search your recollection now. I am talking about the time that you and Mr. Borglund flew to Newport News. Do you recall telling Mr.—this isn't in the documents——

A. I was trying to get the date.

Q. This document, this report, is October 22, 1956.

A. Yes.

Q. So it is somewhere around that same time?

A. Right.

Q. Do you recall that you told Mr. Hornady, possibly Mr. Smith together, that you had an arrangement with Greater Buffalo, since they had purchased the plant, that depended on your volume, and the diminution of any volume you had printed in Greater Buffalo reduced—or raised the price, that is why you were anxious to keep up your volume, and so that you asked them to cooperate by not soliciting the sale of supplement printing from newspapers that NEA was then servicing, do you recall that?

A. No, I have no recollection of that.

Q. Do you recall anything like this; that Mr. Smith
2976 or Mr. Hornady said something to you that "Gimbel's doesn't agree not to sell Macy's customers", do you recall any conversation like that?

A. No, I don't.

Q. Now, do you recall that you had told Mr. Hornady that NEA had voluntarily refrained from soliciting printing from any member of the Southeastern Group, and that Hornady told you that you are free to do so, do you recall anything like that?

A. I don't know whether it was this meeting or not. At some meeting we pointed out these publishers were all good friends of NEA, that we were still trying to make this group successful, we were not trying to break it up by taking the printing. I probably told him that.

Q. Did you tell Mr. Hornady that Atlantic Features could sell the readyprint that was available to the Southeastern Group to individual members of the group but that he could not offer that to any newspapers that was then being printed by NEA; as far as those accounts, that newspaper would have to come to NEA, do you recall that?

A. I don't recall those words at all. I will put it in the context of what I saw down there——

Q. Excuse me——

2977 A. —If you look at the situation—

Q. Excuse me. I would like to get your recollection.

A. I am trying to give you my recollection.

Q. Before you begin, Mr. Anderson, I would like you to, please, in giving your recollection to the best of your ability, relate to us when it was and where it was, and whether there were other meetings before or after?

A. To the best of my recollection, there was this meeting you speak about and the one covering this report. It melds together in my mind. Apparently we were down there another time, twice.

Q. You recall how many meetings? Do you recall a meeting referred to in P-147?

A. The one I wrote the report of, yes.

Q. Where was that meeting?

A. This—I think this is my report of the meeting that you referred to.

Q. Where was that?

A. In Newport News.

Q. Who went to that meeting with you?

A. Mr. Borglund and I.

Q. Anyone else?

A. No.

Q. With whom did you meet?

2978 A. Mr. Hornady and Bob Smith and, I believe, Commander Bottom may have come in, probably, in the session.

Q. Where was the meeting?

A. In Mr. Smith's office at the Newport News News, the newspaper.

Q. Tell us, to the best of your recollection, what was said at that meeting, by whom, to whom, and so forth, to the best of your recollection?

A. This is the meeting covered in my report here?

Q. Yes.

A. We told Mr. Hornady that we would like to see the advertising setup that he had for putting national advertising into these newspapers made generally available to all the newspapers in the area and, in order to do so, we offered to put these ads into the papers we printed at no additional mechanical charge to the newspapers. Therefore, he would have a longer run on the section. Mr. Hornady—I don't know his exact

words—what he told us was that he was interested in the printing and not in the advertising setup only so far as if sold printing for him. If they didn't use his printing, they couldn't be in his group for advertising purposes. We discussed the fact that we had not tried to break up the Southeastern Color Comic

Group by fractionizing the printing. We hadn't tried to
 2979 go to the individual papers to get the printing contracts from them. We were still trying to cooperate with this group. I think about that time, too—I am sure at this time—I had in mind that in the southeast King Features had most of the printing. We had a few runs, King Features had more of the printing, and I think I told Jack Hornady, "If you can get the King runs, good, get them, we'll help you any way we can." I don't believe I told him that I would extend these comic contracts for him in each individual case. But any new runs he could get from King, we were still on his side, as opposed to King.

Q. What, if anything—let's look at your report, P-147, and you say: "We made the following proposals: (1) That NEA will continue to allow Hornady to quote our comics in making printing offerings to newspapers at the same rate we are now getting from the Southeastern Group." Does that refresh your recollection that prior to October of 1956, prior to this meeting and earlier, you had a previous discussion with Hornady of Atlantic Features and had at that meeting stated you would allow Hornady to quote comics in making printing offerings to newspapers at the same rate you were getting from the Southeastern Group?

A. It doesn't refresh my recollection. I am talking
 2980 here about continuing the practice. I would have no recollection of that meeting you referred to at the Waldorf.

Q. You don't have a recollection of a meeting at the Waldorf with Hornady concerning—Atlantic Features was formed, Atlantic got new members for the Southeastern Group, trying to get new advertisers for them—at that meeting you told him that he could offer the comics at the same price as had been offered to the Southeastern Group?

A. I don't recall this at the Waldorf Astoria or any other meeting.

Q. Do you recall any meeting with Hornady on this subject prior to October of 1956 about which there is this report?

A. No, I don't recall any meeting I had with him.

Q. Do you recall—

A. I have run into him. I don't know, I don't recall any meeting. I don't recall any meeting.

Q. Let's approach it this way. When you went down to Newport News to discuss this, had you already been doing business with Atlantic Features?

A. Yes, we had sold a few features through Atlantic Features.

Q. How did that come about?

A. How? We were already selling features to the Southeastern Color Comic Group, and Jack informally extended the agreement we had with the Southeastern Color Comic Group to cover Atlantic Features. We may have had a contract, anyway the same arrangement prevailed.

Q. He couldn't have done that without conversation with you?

A. No, this was agreed to, we talked to him on the phone back and forth on each one, on these agreements. I don't mean to imply we hadn't.

Q. Do you recall when he formed Atlantic Features and was getting started on this, you had a personal meeting with him at which you outlined what—

A. No, I don't.

Q. You don't recall. All right. In paragraph 2 you say: "That these quotations on our comics will not be used, for any of our present clients. (3) That present NEA clients will be advised that they can become members of the Southeastern Color Comics Group, if they wish, for advertising representation only, and that the printing can remain with NEA, with Greater Buffalo Press inserting the ads at no cost."

A. Yes, we made that proposal. This is the one he said no.

Q. You say: "We did not get agreement on these proposals. Smith and Hornady made it plain that their primary interest is in obtaining more printing for Southern Color Print, and that they were much less concerned in adding members to the Southeastern Group for advertising purposes only. It became evident that they want to use the advantage of the advertising setup in order to get more runs into Southern Color Print. When we pointed out that we had not been soliciting printing directly from members of the group because we wanted to make the group successful, both of the men said that they were quite surprised we had not done so, and

that we were perfectly free to solicit that business. Since no reasonable method of working together to the advantage of the newspaper publishers represented in the group seemed to be possible at this meeting, we withdrew the privilege of quoting on NEA comics in points where we are already doing the printing." That last paragraph that I read, when you say, "We withdrew the privilege," that would imply that earlier you had had some conversation with Hornady and given him the privilege of quoting NEA comics in points?

A. Yes. No quarrel about it.

Q. You do not have a present recollection of where or how it was done?

2983 A. There were two or three small papers he actually—we made the rights available to him.

Q. Now, the fact remains that after October 22, 1956, you did continue to make available to Atlantic Features publication rights for newspapers that were not being printed by NEA, is that correct?

A. Not generally. We allowed him to have the features in some cases, yes. He no longer represents us, he can't represent us. If he wants to come in in a special situation——

Q. All right——

A. I am trying to make it clear.

Q. I will give you that opportunity. I am talking about after October 22, 1956. Let's take the period for a year or two thereafter, just that short period thereafter. You did continue to make available to Atlantic Features publication rights for newspapers if NEA was not printing for those newspapers, is that correct?

A. I have said we did. At least with the small papers we made them available, yes.

Q. But for newspapers that NEA was then printing for, if Southern Color Print or if Atlantic Features solicited that account then that newspaper would have to come to NEA for the publication rights, is that correct?

A. Yes. Yes, that is right.

2984 Q. All right.

A. He was not our agent.

Q. Now, P-148 in evidence is dated January 9, 1958, and that is your letter to Mr. Brandon, secretary of the Southeastern Color Comics Group, and is it the fact that you then extended to the Southeastern Group the same arrangement that

you did before of eighteen cents a thousand for the comics, is that correct?

A. By this time I think we were down to seven comics.

Q. In the second paragraph you say: "In spite of some rather heavy increases in costs during the past two years, we are willing to go along on the same basis as heretofore at the rate of eighteen cents per thousand per comic, on a group of seven comics, with a minimum rate for each newspaper of \$2.88 per thousand." I see, there was the same eighteen cents, there was seven instead of eight comics, is that right?

A. That is right.

Q. Now then, you say in the second paragraph, after that: "These comics can be used as a unit whenever you add new members to the Southeastern Color Comic Group, providing that we do not have previous contractual commitments covering the territory, or that we are not already serving the newspaper with a color comic section." So that meant if you 2085 were already printing for the prospective new member then Southeastern Color Comic Group could not offer them the rate of eighteen cents a thousand?

A. We put their advertising in our sections, they could not carry it over in the comic agreement. Hornady wouldn't put the advertising in these things unless he got the printing.

Mr. BERNSTEIN: I offer P-149 in evidence, your Honor.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-149 and received in evidence.)

Mr. BERNSTEIN: I offer P-150 in evidence.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-150 and received in evidence.)

Mr. BERNSTEIN: I offer P-151 in evidence.

Mr. STEVEN: No objection.

2086 (Thereupon document referred to was marked Plaintiff's Exhibit P-151 and received in evidence.)

By Mr. BERNSTEIN:

Q. P-149, 150 and 151 referred to the Wenatchee, Washington Daily World, is that correct?

A. That is right.

Q. In 1958 the Daily World was using ten pages of comics. is that correct?

A. Ten pages of comics, two different sections.

Q. Six pages of NEA readyprint, four pages of King readyprint, is that correct?

A. I believe the four pages came from Acme Color. I will have to refresh my memory on that. No, you are right, you are correct.

Q. And the Wenatchee, Washington Daily World wanted to go to a smaller section, is that correct, at this time?

A. Yes.

Q. NEA offered a six page readyprint section and also offered to give them Intermediate Service at no extra charge, is that correct?

A. That is right.

Q. And they, the Wenatchee World, took the offer, is 2987 that correct?

A. Yes. We started printing the section for the Wenatchee World, or continued with the six page section for the Wenatchee World.

Q. And so you reduced the price of the readyprint to make it \$27.00 a week, is that right?

A. The cost of the Intermediate Service was \$27.00 per week.

Q. The cost to the Wenatchee World, is that correct?

A. Yes.

Q. But the cost—

A. We told them, "If you buy this, the readyprint section, we will reduce the price of the readyprint section so that you could have—start the Intermediate Service." They were not previous customers. It is a small paper out there, they don't use many features.

Q. Would you ordinarily have sold the Wenatchee Daily World the Intermediate Service, was their circulation big enough?

A. This was an exception, it was too big. However, it was the type of paper that carried few features, an exceptional type of paper, local and advertising.

Q. As far as the price, \$27.00 a week, your general offer of the Intermediate Service to a newspaper of a circulation 2988 that was big enough for it, what was the price of it?

A. We didn't have any. This was an exception. We don't have any price on the Intermediate Service for larger papers about 6,000. Our rate was at that time for Intermediate Service for papers of 6,000—I don't recall.

Q. More than \$27.00?

A. Less than \$27.00 a week. It would be in the range of \$12.00, \$16.00, \$18.00, in that area for a paper of 6,000. Wenatchee is a larger paper, they would command a higher price.

Q. Their circulation was 17,500?

A. That is right.

Q. What would you offer a paper of 17,500; Full Service?

A. Normally they would have the Full Service.

Q. Now, the last paragraph of P-149 reads as follows: "We may face some complications in this situation in the form of a separate bid for the printing submitted by Acme Color Print. Just by chance Cap Barnes, the Acme representative, arrived in Wenatchee thirty minutes before I did. He stumbled onto the fact they were going through a major comic section revision and immediately offered to bid on the printing. He did not do

this during the meeting but he later told me he had asked 2989 Jim Richter to send up a printing quotation on an eight-page standard section using six full pages of NEA comics. From what I know of Acme's printing rates, I can't imagine this bid being too competitive but it is a factor to consider. I questioned the propriety of Acme submitting this bid when they know full well they are making it against an NEA readyprint. They take the attitude that we are only interested in selling comics and don't care who gets the printing. I don't want them to know just how lucrative we consider the printing control." Now, underneath that last paragraph there are the initials E.H.A., are those yours?

A. Yes.

Q. There is some handwriting under that, "Any ideas on this one." Whose handwriting is that?

A. The initials are W.H.B. I would assume Mr. Borglund's.

Q. Was that to you or somebody else, that question, "Any ideas on this one"?

A. It is marked for H.W.W. and E.H.A., and the H.W.W. was Mr. Walker and the E.H.A. is myself.

Q. Do you recall whether you gave him any ideas on that?

A. I gave him no ideas

Mr. BERNSTEIN: I have no further questions of this 2990 witness. At this time, your Honor, I move to amend

Paragraph 28 of the complaint by substituting the word "Copyrighted" for the word "Comic" on the third line of the paragraph, to conform to the proof adduced from this witness.

The Court: Copyrighted instead of what?

Mr. BERNSTEIN: Comic. The word "Copyrighted" instead of the word "Comic." The allegation reads—the portion of the allegation reads as follows: "Beginning in or about 1954 or prior thereto, and continuing to the date of the filing of this complaint, defendant Hearst and NEA severally have sold and presently sell comic features to newspapers at discounts", etcetera. The amendment would say that "NEA severally has sold and presently sell copyrighted features to newspapers at discounts," etcetera. The basis for the motion is that the testimony of this witness was that he offered the reduced—
2991 offered to provide the Intermediate Service, a copyrighted service but not necessarily comics, as part of the unit price of the package deal, and the purpose of this amendment would be to make clear that the charge is tying in the printing of color comic supplements not only to the copyrighted features of comics but also to other copyrighted features of NEA.

Mr. STEVENS: I object to it. We have been talking about comic features, your Honor. That is what this case is about.

The COURT: Is there any bill of particulars here?

Mr. BERNSTEIN: No. If your Honor wishes to reserve decision on this, I would like an opportunity to argue this when we come to the final arguments.

The COURT: I would like to move along with the proof. Let's do it that way.

Mr. STEVENS: All right.

The COURT: I wish you would make note of that reservation.
2992

Mr. STEVENS: I think the fact of the matter is that in the Intermediate Service—perhaps Mr. Anderson could testify to this if he were asked—there isn't anything copyrighted except the comics.

The COURT: Is that so?

The WITNESS: That is right, yes, sir.

Mr. STEVENS: So it is a silly amendment.

The COURT: We will save that. I want to get on with the evidence, whatever it may be.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Anderson, did I understand you to say that Wenatchee, the newspaper there, had both a King readyprint and an NEA readyprint?

A. That is right.

Q. And that the decision of the paper in Wenatchee was to move to a single readyprint?

A. That is right.

Q. Was there competition for this new single readyprint run?

A. Yes, there was.

2993 Q. Who were your competitors?

A. Acme Color Printing.

Q. Was King also a competitor?

A. Yes.

Q. And what were you doing when you made available to the Wenatchee paper NEA's Intermediate Service along with the readyprint section which you quoted to it?

A. We certainly were not telling them they could not have the Intermediate Service unless they bought the printing. We were trying hard to make them want the Intermediate Service, to get a start with that newspaper on our daily service. It would also be advantageous to the paper, helpful to them, if the few comics that were in the Intermediate Service could be carried over into the Sunday section they had. They were dropping quite a few comics in order to make one section. They had two sections and were coming down to one. They were dropping quite a few Sunday comics. It seemed to us it would be helpful if some of the comics in the Sunday paper could be in the daily. That is why we made this exception and offered them the Intermediate Service.

Q. You spoke on your testimony, upon Mr. Bernstein's inquiry, that the Wenatchee paper was unusual in the number of features which it had. Will you enlarge upon
2994 that?

A. The Wenatchee paper, in spite of the fact it had about 17,000 circulation, carried very few features from outside sources. They were largely local news, some national news, very few of the comics and things like that that most papers of that size normally carried.

Q. What relation did that situation have to making an exception to your policy of providing papers of that size the Intermediate Service?

A. Our Full Service carried too many features for them to start using right away. The fewer features in the Intermediate Service would be more attractive than all the features. They were not a feature paper.

Q. Now, that is a readyprint run which NEA got?

A. That is right.

Q. You have already told us, I believe, that with reference to the Gary, Indiana Post Tribune, which is discussed in exhibit P-142, NEA did not get that run?

A. That is right.

Q. Did NEA get the run in Alexandria, Louisiana, which is discussed in P-143?

A. No.

Q. Did it get the run in Albuquerque, New Mexico, which is discussed in P-144, 145 and 146?

2995 A. No.

Q. Now, Mr. Bernstein said that he would give you an opportunity to describe at length NEA's relation to the Southeastern Color Comic Group. Will you tell us why—because I don't know that you were given that opportunity—you did not permit Mr. Hornady or his corporation, Atlantic Features, to sell NEA comics into the Southeastern Color Comic Group section?

A. We didn't allow Mr. Hornady to sell any more of our comics because he was already the representative from some of our competitive syndicates. Also our history shows we had eight comics when we started, today we have three. Our comics were not in good hands, as far as Mr. Hornady was concerned. He complains he don't have them, but he don't use them when he has them. They were continually offered to all the newspapers in this group individually and to Mr. Hornady for this group. All of NEA's eighteen comics, singly or in a group, any way he wanted them. The net result was, in spite of the fact he says he has to have NEA comics and is hurt by not having them, he don't buy them.

Q. Have you ever refused to sell NEA comics to—

A. We have never—Hornady can't point to a single instance in the southeast or anywhere where we have ever refused

2996 to sell any newspaper NEA comics at fair rates if they were not previously covered by the contract.

Q. Instead of being just a competitor representing one syndicate licensing Sunday color comics, Mr. Hornady now represents three syndicates?

A. That is right, more Sunday comics than NEA has.

Q. And you still do business with the Southeastern Color Comic Group?

A. Yes, we do.

Q. In exhibit P-149 Mr. Bernstein called your attention to Mr. Hanson's comment in the last paragraph, expressing his views upon Acme also quoting a section at Wenatchee?

A. That is right.

Q. Was there ever any restriction on Acme quoting a section where NEA had the business?

A. No, this is merely this salesman finding out he had more competition on hand. We never restricted Acme from making any quotations.

Q. A little more generally, Mr. Anderson, and this may be somewhat repetitious, how many feature organizations are there which license Sunday color comics?

A. I went through the Editor and Publisher Syndicate Directory, the last annual edition of it, and I found that there
2997 were eighteen syndicates listed there who offer Sunday comics. There may be more, but I found that many.

Q. How many such individual color comic features are there?

A. I counted 189 Sunday color comics available to publishers.

Q. Of course, exhibit N-6, the tabulation of NEA's Sunday color comics, shows that you have eighteen or twenty?

A. We now have twenty, that is right.

Q. Can Sunday color comics be grouped generally by the types of subject matter or interest to which they are addressed?

A. I think so. Generally you have the soap opera comics, the adventure comics, you have the family comics, you have the children's comics, the puzzles, things like that. Those probably are the general groupings.

Q. Does NEA have a comic which fits in each of those categories?

A. Yes, we try to cover those fields.

Q. Are there counterparts in each of those categories available from other feature agencies or organizations?

A. There are plenty of them available.

The COURT: What is the category on that Beetle thing?

The WITNESS: I would say—that would be Beetle
2098 Bailey?

The COURT: Yes.

The WITNESS: I would say that would be general interest, humor feature.

The COURT: Do you know what you have done to me in this lawsuit, you've got me back in the funny papers again. Last night I purposely looked and there was Beetle Bailey in the News, and it wasn't bad either. I think it was a cook with a great big cake and another—I don't know who the character is, a big fat fellow——

Mr. STEVENS: Sergeant Snorkel.

The COURT: The cook was saying, 'There is something, I am not sure about this cake.' It is a huge one. In the next picture the other fellow is saying—and there isn't a bit left—he says, 'Too much cinnamon.'

The WITNESS: Keep on being a fan, your Honor. We are losing a lot to television these days.

2099 By Mr. STEVENS:

Q. From your broad experience in the color comic supplement field, do you know of any comic which is so strong that a publisher would buy printing, which he might not otherwise want, to get it?

A. No, I don't know of any today.

Q. When NEA sells a color comic section to a newspaper, has it ever said to that paper or its publisher, 'You can't buy another one from anybody else'?

A. No, we have not.

Q. Has NEA ever sold and does it presently sell comic features to newspapers at discounts, rebates or reduced prices on agreement or understanding that such newspapers shall not purchase or deal in color comic printing services offered for sale or sold by any competitor or competitors?

A. No.

Mr. STEVENS: I have no further questions.

REDIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. To clarify one thing; in October 1956, when you had this meeting with Mr. Hornady, was he then a representative for any syndicate other than the Hall syndicate?

A. I don't know.

Q. Inviting your attention to N-2, your Intermediate Service; which of the features on that exhibit are copyrighted, outside of the ones under comic pages?

A. To the best of my knowledge right now, I don't see any copyrighted features there. I am willing to have it checked. I don't see any there.

Q. You are not certain?

A. That is right.

Mr. BERNSTEIN: No further questions.

Mr. STEVENS: I may state, on that, we will check it and advise Mr. Bernstein, if that is a matter of importance to him.

The COURT: All right. I guess that is all.

The WITNESS: Thank you.

(Witness excused.)

3001 VERNON J. GAMBLE, called as a witness in behalf of the Plaintiff, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Gamble, would you please state your name, business address, name of the organization with which you are associated, and the capacity in which you are associated?

A. Vernon J. Gamble, Newspaper Enterprise Association, 100 West Third Street, Cleveland, Ohio. I am the sales director.

Q. How long have you held that position?

A. About three or four years.

Q. Prior to that—how long have you been with NEA?

A. Twenty-seven years.

Q. And prior to your present position—

A. I was the assistant sales manager for about ten years. I was the promotion manager before that and the managing editor, with a term in between for Army Service.

Mr. BERNSTEIN: I offer in evidence P-152.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-152 and received in evidence.)

Mr. BERNSTEIN: I offer in evidence P-153.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff's Exhibit P-153 and received in evidence.)

Mr. BERNSTEIN: I offer in evidence P-154.

Mr. STEVENS: No objection.

(Thereupon document referred to was marked Plaintiff Exhibit P-154 and received in evidence.)

By Mr. BERNSTEIN:

Q. Mr. Gamble, P-152 in evidence is a memorandum that you wrote on March 28, 1957, to Mr. Hanson. Have you had the opportunity to read this memorandum recently?

A. Yes.

Q. Have you also—

Mr. STEVENS: He read all of 'them.

By Mr. BERNSTEIN: All right.

3003 By Mr. BERNSTEIN:

Q. Now, the memorandum, P-152 refers to the Bend Bulletin, what was that?

A. Bend is a city in central Oregon and the Bend Bulletin was their local newspaper at that time.

Q. What was the occasion of your writing to Mr. Hanson?

A. We had received a cancellation from the Bend Bulletin on the Full Service, which we provided to them. They had this for a few years, and prior to that they had the Intermediate Service. They tried the Full Service and apparently the quantity of the features in that Full Service—this is the daily feature service—proved too much for the space they had. They ran a four, six-page paper each day, and didn't have the opportunity to make full use of the service. Therefore, they cancelled with the idea they would like to drop back to the Intermediate Service.

Q. Did they have a readyprint contract at the time?

A. No, they didn't have a weekend or Sunday paper which required color comics. But somewhere in the line of Mr. Hanson's following up on the Intermediate cancellation, he developed or found out that they were interested in the possible use of a color comic section, either as a Saturday weekend
2004 edition or a Sunday edition that they proposed to establish.

Q. He wrote this memorandum in March of 1957, and they proposed to establish the section that would use the readyprint in the fall?

A. Yes.

Q. And you authorized him to offer to continue two comic features. OBH and Bunny, at no extra charge contingent on the readyprint contract?

A. That is if they were to take on the readyprint service and the Intermediate Service at a considerable, sizable investment over what they had been paying, we felt that we could accommodate them by giving them two features they requested from the Full Service to continue with the Intermediate Service.

Q. I show you P-153, another memorandum from you to Mr. Hanson, with respect to the same paper. That was prepared in November of 1957. What was the fact then with respect to the readyprint situation?

A. The readyprint did not develop. They apparently did not go ahead with their plans to establish the Sunday paper, and we had for several months at that time been supplying the two features from the Full Service with the Intermediate Service, and felt that, as had been explained to the publisher at the outset, if they didn't go ahead with the readyprint 3005 we felt there should be some fair compensation made for the two features from the Full Service.

Q. You suggested an additional charge of \$5.00 to cover those two additional comics, is that correct?

A. Yes. I might explain that this was sort of an exception to our normal practice. We either sell one service or the other. Here we are under both a cancellation situation, which required some extra negotiation by our salesman, also we faced a competitive situation in that if they went through with the cancellation, they would buy their features from somebody else.

Q. Who did the printing?

A. There was no printing done.

Q. Who did the readyprint?

A. This was a proposal to start a readyprint if they established the Sunday paper.

Q. They had been using OBH?

A. These were daily comics. OBH is Major Hoople, Our Boarding House and Bugs Bunny.

Q. They had been using the daily comics free of charge on the condition they would buy the readyprint from you in the fall; when the readyprint deal fell through you commenced charging them \$5.00 for the daily features?

3006 A. They had been using these daily feature comics for quite a number of years as clients for the Full Service, and when they reduced to the Intermediate Service they requested we continue those two comics. At the time they made the request they were in negotiation on readyprint, which would have cost them, as the figures show, about \$50.00 more a week of total investment for the printing, comic rights, and everything else. At that time we didn't want to add another \$5.00 onto their expense, but since they were continuing only with the Intermediate Service, which carried a rate of eighteen-ninety, we felt we were justified in asking them, as we had forecast to them, they didn't have to continue these two features——

Q. When they cancelled the full contract, they got the Intermediate Service for——

A. For eighteen-ninety.

Q. And that included OBH and Bunny?

A. It did not include those two comics, because the continuation of those was a matter of negotiation during Mr. Hanson's call on them, during the period of the cancellation. The cancellation was probably a year's notice, so there was a time of negotiation during which these two comics were arranged for.

Q. There was no interruption in the printing of the 3007 daily comics?

A. No.

Q. They were paying for them under the full contract?

A. They continued with the full contract until the expiration, which probably would have been coincident with the starting of the readyprint.

Q. When the effective date of the cancellation came in, and the readyprint fell through, they paid you twenty-three ninety?

A. That is right.

Q. I show you P-154 in evidence. This refers to the——

The COURT: I don't see anything in that last batch. What can you tell me about that that you think is odious?

Mr. BERNSTEIN: This is evidence of the fact that a newspaper buying NEA's printing is able to obtain copyrighted features or some features, black and white, or daily features, that a newspaper who is not buying their printing, getting their printing from somebody else, is not able to get.

The COURT: That is the same kind of deal that I talked to Mr. Anderson about in the south?

3008 Mr. BERNSTEIN: It is additional evidence—these exhibits are representative of the various types of ways in which NEA is able to tie to the printing of color comic supplements the copyrighted features.

The COURT: Do you mean it creates a situation that is susceptible of this, you think you have the proof?

Mr. BERNSTEIN: Not only susceptible—

The COURT: You mean it has to be?

Mr. BERNSTEIN: Yes, sir.

The COURT: You say that kind of arrangement, per se, was a violation?

Mr. BERNSTEIN: That is correct.

By Mr. BERNSTEIN:

Q. P-154 evidences that in 1954, in connection with the Ponca City Oklahoma News, Mr. Minton, your salesman, offered them a readyprint deal in which he offered—what is that?

A. Alley Oop.

Q. For no extra charge, is that correct?

3009 A. He uses salesman's jargon, "I threw in Oop." This covers quite a bit of background and negotiations which was the result of the Ponca City paper receiving a readyprint arrangement from NEA. Alley Oop happened to be one of the comics in the readyprint going to several papers. It was an economy to the paper if we gave them Alley Oop, rather than to charge them for a comic, or if they were to purchase a comic from some other source and place it in there, because then they would have an additional \$10.00 charge in connection with the printing, which the printer would charge us and we, of course, would charge the paper for making the change. This adding, putting Alley Oop, in the section, was at the option of the client, and it was an accommodation to him to save him money in the overall total purchase of the section. For us it was no extra expense, it was on the presses, no new masts or makeready was involved.

Q. Was it customary to offer features at no charge in order to obtain a readyprint contract?

A. I would say not a multiple number of features. One feature of this type apparently seemed justified in this case. We already had two of them we were selling at the \$5.00 price, a

fair rate to Ponca City. We were again in a competitive situation; King was bidding on the run. Apparently, in dealing there, Mr. Minton felt he had to make some concession to the publisher to enable the publisher to hold his price in line. He was paying quite a bit for the section, he had a very unusual section, which required, as pointed up higher in the report, an additional \$20.00 for changing pages from the basic readyprint makeready, and for a paper of the size of this, 10,000, 12,000, this is a higher rate than if the paper had 50,000 and could have spread the extra cost over a greater number of sections.

Q. Was Alley Oop a desirable feature?

A. One of the better features. I couldn't say it was an influence on the publisher, one way or the other.

Mr. BERNSTEIN: I have no further questions, your Honor.

CROSS-EXAMINATION

By Mr. STEVENS:

Q. Mr. Gamble, you have some knowledge of Wenatchee, Washington, do you not?

A. Yes.

Q. As a matter of fact, you lived in that area at one time?

A. That is the apple capital of the world.

Q. Will you tell us, from your knowledge, something about the nature of the Wenatchee paper and the desirability of the arrangement made with it?

3011 A. Well, actually I have taken a particular interest in Wenatchee because of my association and background with the State of Washington. I followed with interest, over a period of maybe fifteen years, the efforts of our earlier salesman, Sherman Montrose and later, Hal Hanson, who replaced Montrose in the 1950's, to try and place our full daily feature service in the paper. We had already been supplying them with a color comic supplement for a number of years, and we felt there was an advantage to the client from a business standpoint, from a readership standpoint, to have the continuity of daily features which the readers would follow in the Sunday edition. But the particular feature situation there being they only used ten, twelve features in their entire newspaper, as compared to twenty-five or thirty comics and features used by the Yakima paper of similar size in the same state, same area, made it not possible for them to probably at any foreseeable point take on

the Full Service. This led to the development of the idea by Mr. Hanson during the negotiation period, which was reported in these exhibits, that the Intermediate Service might serve their interests better, and this was their option, there was no additional charge involved or no reduction in cost on the readyprint, it was their option, if they would like to try out 3012 the Intermediate Service.

Q. There was no question about "You take this or you don't get that"?

A. No. They could have the Intermediate Service or the readyprint King Features, for example, or Acme Color Print had sold them the comic section at that time, they could still have the privilege of buying the Intermediate Service at \$27.00. Because of the peculiar nature of their publication and their feature desires we knew—and this has been true for ten years or more—they would never be a prospect for the larger feature service.

Q. With reference to Bend, Oregon, as reflected in exhibits P-152 and P-153, is it fair to say that what NEA was doing was promotional work to sell a readyprint section?

A. I believe so, yes. It was helping the newspaper establish a weekend edition, and the color comic section would be a definite asset to them in promoting new readership for this new weekend edition.

Q. And all that you did was to let them have two daily comics out of the Full Service until such time as they had decided upon the readyprint, is that correct?

A. Yes. There was also the potential here that they might come back to the daily Full Service at some time, and it would be to their advantage to keep the readers interested in 3013 the two additional comics during that period.

Q. There was no printing by NEA of the daily comics, was there?

A. No, this was done locally. We supplied the material to them for local printing.

Q. So there was no tie of printing to comics in that?

A. No, merely an accommodation to the client.

Q. With reference to P-154 and Ponca City, Oklahoma, it is my understanding, from what you have told Mr. Bernstein, that in the readyprint section, which was sold to Ponca City, Alley Oop was already in the makeready?

A. Alley Oop was already in the makeready of the section that was on the press, the readyprint section.

Q. Who owned that makeready?

A. That was NEA's makeready.

Q. NEA had an investment in that makeready?

A. That is right.

Q. Now, is it correct, that to aid the paper you let it have Alley Oop without a separate charge for it?

A. That is correct.

Q. Who benefited from that?

A. I would say the newspaper and its readers benefited.

Q. It was something that NEA could do, as a sales promotion matter, to aid its customer without additional cost

3014 to NEA?

A. Yes.

Q. I would like to ask you one or two questions which I asked Mr. Anderson. From your broad experience in the color comic supplement field, do you know of any comic which is so strong that a publisher would buy printing, which he might not otherwise want, to get that comic?

A. No, I don't believe I do.

Q. I might ask you, while I am fumbling with these papers, how long have you had direct contact with color comic supplements, as an employee of NEA?

A. Ten, fifteen years, when I was assistant sales manager or sales director.

Q. At any time in the past and now has NEA ever sold comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement, or understanding that such newspaper purchasers shall not deal in the color comic supplement printing services offered or sold by any competitor or competitors?

A. No, NEA has not.

Q. As a matter of fact, NEA has sold its color comic features to anybody who wanted them, isn't that correct?

A. We have been most anxious to.

Mr. STEVENS: That is all.

3015

REDIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. It is obvious, Mr. Gamble, that NEA is most interested in seeing a following development for NEA comics, isn't that correct?

A. That, I would say, is a fair statement.

Q. When you do provide the comics free to a newspaper, NEA is getting some benefit from that by increased following, isn't that correct?

A. There may be future benefit in it from the standpoint the newspaper will continue to be our customer.

Mr. BERNSTEIN: I have no further questions.

The COURT: All right.

Mr. BERNSTEIN: That concludes the Plaintiffs' case with respect to the allegation against NEA of the violation of Section 3 of the Clayton Act.

Mr. STEVENS: We have no additional proof to offer your Honor.

The COURT: Does that close the evidence?

Mr. BERNSTEIN: We are closed on the evidence of the entire case except one item. We have received permission from counsel for Greater Buffalo to offer in evidence an exhibit, as 3016 P-155, a list of the officers of the International Color Printing Company from the year 1950 to 1959.

Mr. MOORE: To that we have no objection. We are back in the main case.

(Thereupon document was marked Plaintiff's Exhibit P-155 and received in evidence.)

Mr. BERNSTEIN: That closes the evidence.

The COURT: We settled this morning that sixty days after you get the transcript I will have your briefs. In the letter, when you send me the briefs, certainly you, Mr. Bernstein, and I invite the others, can remind me of their desires to set aside a day for oral argument.

Mr. STEVENS: I would like the record to show a motion to dismiss the Clayton Act, Section 3 charge against NEA for failure of proof.

The COURT: I will reserve on that.

Mr. STEVENS: I understand, your Honor.

3017 The COURT: Gentlemen, it has been three good stiff days here of work. I think finally we are through. Alley

Oop.

(Thereupon the Court was in recess.)

3018 (— for ident., P-1 in evid.,

H. T. Noel, Official Reporter, U.S. District Court.)

cc: Walter Koessler, William Hammond, Kenneth Koessler.

MAY 14, 1956.

MR. ROBERT WILKERSON,
Equitable Life Assurance Society
Comer Building, Birmingham, Alabama

DEAR SIR: I am writing this letter in response to your request that we give you a background of International Color Printing Co.

Company was incorporated in 1922 for purpose of printing a Sunday newspaper in Wilkes-Barre, Pa. In 1924 idea of printing comic supplements for other newspapers was conceived. First order was from King Features Syndicate—300,000 four page sections weekly.

To produce these sections, company erected a single width, four deck Hoe press in a small residential type building on Market St., Pittston, Pa.

Owner of all the original stock, except two qualifying shares, was R. R. Govin, who at that time was engaged in businesses in New York and Havana, Cuba. Company was capitalized at \$50,000, but no cash was paid in for the stock. Operating funds and cash for original machine were loaned to International by other companies owned by Mr. Govin.

In this manner approximately \$90,000 was advanced in the period from 1925 to the end of 1927. This was the only cash ever received from owners. During the years from 1927 to 1933 the original loan was repaid but also, during that period several additional presses were installed with no additional capital or borrowing.

Company signed a contract with King Features in 1925 to print all of the Syndicate's comic supplements. Later on, because of the distance to Pacific Coast, contract was amended to read "at least seventy-five per cent" of all printing sold by Syndicate. Original contract, and renewals, were in effect from 1924 to June, 1955, when we signed a new contract which will carry us to 1965 with option for renewal. By that time we will have been printing King's work for a period of over forty-one years.

What is King Features Syndicate? It is by far the largest newspaper syndicate in the World. It owns rights to comic and editorial features, which it sells to newspapers in every country outside the Iron Curtain. Syndicate has had tremendous growth and International Color has grown with it. Starting with the one single width Hoe press, with a total capacity of a little more

than one million sections weekly, we have grown until we now have the following press equipment:

3019

Four single width Hoes.
Five single width Gosses.
Six double width Hoes.

Total printing capacity now over forty-five million four page sections weekly and we are actually producing about thirty million sections every week. As stated before, this work is obtained through King Features Syndicate.

The Syndicate sells its editorial and comic features to several thousand newspapers. There are actually six hundred Sunday newspapers in the United States, Canada and Latin America using colored comic sections. Of this total we service one hundred seventy-five and Greater Buffalo Press over one hundred twenty-five. Greater Buffalo Press is mentioned specifically at this time because of Recent Purchase by Greater Buffalo of International Color Printing Co. stock.

Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company produces over 63,000,000 four page sections weekly. No other printing company produces more than 6,000,000 weekly and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the supplements now produced by International. Greater Buffalo differs from International in a number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers.

It has cost International in the neighborhood of \$1,500,000.00 to install sufficient equipment to turn out present volume. A detailed study by consolidated appraisal company of New York City indicates that cost to reproduce present facilities would be well over \$2,500,000.00

As stated earlier, there has been no cash from owners, other than the original \$90,000. which was repaid within a few years. On the other hand, besides building the plant, company has given to the Gevin family, owners before Greater Buffalo

Press, several hundred thousand dollars in the form of dividends, etc.

Cash for growth, repayment of loans, payments of dividends, etc., has been obtained from earnings. It should be pointed out here that company's average monthly loan has never been more than \$10,000. And during the past several years there has been practically no borrowing of any kind. Last year daily cash balance averaged approximately \$130,000.

King Features pays company, according to contract, on a weekly basis. International pays for newsprint, ink, etc., on a thirty day basis. This arrangement provides us with what might be called hidden working capital.

International Color services papers in a great many states and prints for Southern state papers over eight million four page sections weekly. For many years we have considered the advisability of putting a plant in the South, but until very recently, this was impossible because of lack of newsprint there. Greater Buffalo also had plans for plant in the South but was held up by excessively high cost of newsprint when shipped

from Canada. At just about the same time International 3020 and Greater Buffalo made newsprint contracts in the

South, Greater Buffalo with Southland at Lufkin, Texas and International with Coosa River at Coosa Pines, Alabama. To handle work in the South and at same time maintain satisfactory facilities in Wilkes-Barre and Peoria, we anticipate the installation of press, stereo and paper handling equipment in Sylacauga, Ala., with a value of not less than \$700,000, over a several year period.

The advantages of getting together to work out plans which will be for the mutual benefit of both companies, as well as advantages to Southern Newspapers, immediately became obvious. There will be an exchange of mechanical ideas, machinery, etc., and such exchange will not only increase the profits of both companies—it will make it possible to save money for Southern publishers and thus protect the interests of both companies.

Southern newspapers now receiving weekly colored comic supplements from us are the following:

Anderson, S.C., Independent
Asheville, N.C., Citizen Times
Bradenton, Fla., Herald

Bristol, Va., Herald Courier
Charleston, S.C., News & Courier
Clearwater, Fla., Sun
Danville, Va., Register
Decatur, Ala., Daily
Durham, N.C., Herald Sun
Gadsden, Ala., Times
Greenville, S.C., News
Huntsville, Ala., Times
Jackson, Miss., State Times
Jackson, Tenn., Sun
Kannapolis, N.C., Independent
Lake Charles, La., American Press
Lakeland, Fla., Ledger
Lynchburg, Va., News & Adv.
Martinsville, Va., Bulletin
Monroe, La., News Star World
Montgomery, Ala., Advertiser
Orangeburg, S.C., Times Democrat
Spartanburg, S.C., Herald Journal
Tupelo, Miss., Journal
Tuscaloosa, Ala., News
Wilmington, N.C., Star News
Raleigh, N.C., News & Observer
Birmingham, Ala., News
Chattanooga, Tenn., Times
Columbia, S.C., State
Columbus, Ga., Ledger Enquirer
Charlotte, N.C., Observer
Knoxville, Tenn., Journal
Macon, Ga., Telegraph News
Orlando, Fla., Sentinel
St. Petersburg, Fla., Times
Savannah, Ga., Morning News
Winston Salem, N.C., Journal & Sentinel
Augusta, Ga., Chronicle
Jackson, Miss., Clarion Ledger
Miami, Fla., Herald
Norfolk, Va., Pilot
Richmond, Va., Times
Roanoke, Va., Times World

A word about depreciation reserve. The original Hoe press installed by us in 1924, was then capable of producing 14,000 four page sections per hour. It is now producing 30,000. There is not a single press in the plant which is not doing from fifty to seventy-five per cent more work per hour than was originally intended. Reason—we have our own machine shop and engineers and our regular maintenance crew keeps making what-over changes are necessary to improve speed and at the same time lengthen life of press.

3021 About relations with King Features Syndicate. I have already given you a copy of the recently signed contract renewal, with automatic renewal for like periods of time until notice is given in writing of minimum of two years before expiration date.

About newsprint supply. Hearst Newspapers have a contract with Coosa River Newsprint Company to supply a minimum of 10,000 tons of newsprint a year which Hearst guarantees to purchase and use and which by assignment Hearst guarantees to resell to International Color Printing Company. In short, we have a contract for Coosa River newsprint which will carry us for 14 years from this date. This contract provides that International Color will save \$4.50 per ton on each ton of newsprint under the present price—we are now paying in our Northern plants, and with the minimum use of 10,000 tons per annum we will save over \$35,000.00 per year since we will have to pay \$1.00 per ton or less for hauling from Coosa Pines to Sylacauga. This saving will, of course, go a long way toward amortizing the cost of the proposed new building.

International Color Printing Company is now the wholly owned subsidiary of Greater Buffalo Press but will continue to operate under the same management as during the past 30 years.

Summary. By putting a plant in Alabama and working closely with Greater Buffalo Press we anticipate economies in newsprint transportation and production which will, besides improving the profit pictures of both companies, prove beneficial to our newspaper customers and thereby make solid our own future. The first newspaper supplement was printed in 1896. Today every Sunday newspaper, with one exception, the New York Times, uses the comic sections not only as

circulation builders, the original intention, but also as a producer of considerable income through advertising.

Hoping that this will give you at least in a general way the information you require about background of International Color Printing Company, I remain

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN,

President & General Manager.

JJG/HLM

3022 [Ex. 2 for ident., P-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AGREEMENT made and entered into this 4th day of September, 1930, by and between KING FEATURES SYNDICATE, INC., a corporation organized under the laws of the State of New York, hereinafter called the party of the first part, and INTERNATIONAL COLOR PRINTING COMPANY, a corporation organized under the laws of the State of Pennsylvania, hereinafter called the party of the second part:

WITNESSETH: The party of the first part is engaged in furnishing colored supplements to various newspapers published throughout the United States of America.

The party of the second part represents that it is prepared to print and distribute such colored supplements for the party of the first part, and it is the desire of the parties hereto to enter into an agreement whereby the party of the first part may have a portion of its colored supplements printed and distributed for it by the party of the second part.

NOW THEREFORE, in consideration of the foregoing recitals, the sum of one dollar, and other good and valuable consideration, by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, it is agreed between the parties hereto as follows:

FIRST: The party of the second part agrees to print, wrap and ship for the party of the first part, to the various clients designated by the party of the first part, such quantities as it may order, provided that the aggregate of such orders shall be for not less than 500,000 four page comic supplements per week,

with the outside pages to be printed in four colors, and the inside pages to be printed in three colors, on thirty-three pound newsprint paper, upon the terms and conditions hereinafter stated.

3023 **SECOND:** This contract is to be in force for a term of three years commencing on the 8th day of September, 1930 and shall continue on thereafter until either party has given to the other six months' notice in writing of its desire to terminate it, which notice may be given at any time after the 8th day of March, 1933.

THIRD: The party of the second part undertakes and agrees that such supplements so printed shall be printed in a proper and workmanlike manner, and shall be satisfactory to the clients of the party of the first part, and that the same shall be printed as promptly as possible after receipt by the party of the second part of the matrices required for such printing, and on a schedule of at least two weeks in advance of the release date of such supplements.

FOURTH: The party of the first part undertakes and agrees to furnish to the party of the second part the necessary matrices for printing such comic supplements in time for the party of the second part to comply with the terms of this agreement, and to pay to the party of the second part rates in accordance with the following schedule, for each one thousand supplements so printed, wrapped and labeled ready for shipment f.o.b. railroad at Wilkes-Barre, Pa.: For the first 500,000 supplements \$3.85 per thousand; for the next 250,000 supplements, up to 750,000, \$3.65 per thousand; for the next 250,000 supplements, up to 1,000,000, \$3.28 per thousand; for the next 100,000 supplements, up to 1,100,000, \$3.23 per thousand; for the next 100,000 supplements, up to 1,200,000, \$3.18 per thousand; for the next 100,000 supplements, up to 1,300,000, \$3.12 per thousand; for the next 100,000, up to 1,400,000, \$3.09 per thousand; for the next 100,000, up to 1,500,000, \$3.07 per thousand; for the next 100,000, up to 1,600,000, \$3.06 per thousand; for the next 100,000, up to 1,700,000, \$3.05 per thousand; for the next 100,000, up to 1,800,000, \$3.04 per thousand; for the next 100,000, up to 1,900,000, \$3.03 per thousand; for the next 100,000, up to 2,000,000, \$3.02 per thousand; for the next 100,000, up to 2,100,000, \$3.01 per thousand; for the next 100,000,

3024

up to 2,200,000, \$3.00 per thousand; for the next 100,000, up to 2,300,000, \$2.99 per thousand; for the next 100,000, up to 2,400,000, \$2.98 per thousand; for the next 100,000, up to 2,500,000, \$2.97 per thousand.

FIFTH: It is further mutually agreed that supplements provided for herein shall be printed from not more than one combination of comic page matrices for each 50,000 supplements so printed, and that the pages composing such makereadies shall be determined by the party of the first part.

SIXTH: The party of the second part further agrees that it will not print comic pages or supplements from matrices furnished to it, or caused to be furnished to it, by the party of the first part, except in accordance with orders in writing from the party of the first part.

SEVENTH: The various prices per thousand supplements aforementioned are based upon the present contract price for newsprint of \$3.10 per cwt., delivered at Wilkes Barre, Pa., for thirty-three pound newsprint paper, thirty-one and one-fourth inches wide, and it is expressly agreed and understood that the price for such supplements shall be readjusted proportionately, either upward or downward, as the price on newsprint sold under contract to the party of the second part shall increase or decrease during the term of this contract.

EIGHTH: It is further mutually agreed that during the term of this contract, party of the second part shall not produce printed comic supplements for any other than the party of the first part.

NINTH: It is further mutually agreed and understood that this contract supersedes all previous contracts between 3025 the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

Witness:

KING FEATURES SYNDICATE, INC.,
 By JOSEPH V. CONNOLLY

Witness:

THE INTERNATIONAL COLOR PRINTING Co.,
 By JOSEPH J. GORMAN, *Secty. Treasurer.*

3026 [P-3 for ident., P-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

OCTOBER 21, 1932.

KING FEATURES SYNDICATE, INC.,
235 East 45th Street,
New York City

GENTLEMEN: This is to advise that effective with the releases printed for November 6th our printing rate is to be reduced at the rate of 10¢ per thousand four-page sections on all supplements printed for you commencing the date specified. This reduction is to continue up to and including September 3, 1933. Beginning with supplements printed for September 10, 1933 the printing rate is to be further reduced in the amount of 10¢ per thousand four-page sections, making the total amount of the reduction 20¢ per thousand four-page sections, commencing September 10, 1933.

It is further understood and agreed that our contract dated September 4, 1930 is to be extended one year, that is, until September 8, 1934, all other terms and conditions of our existing agreement to remain the same.

Very truly yours,

THE INTERNATIONAL COLOR PRINTING COMPANY.
By JOSEPH J. GORMAN, *Secretary-Treasurer*.

ACCEPTED BY KING FEATURES SYNDICATE, INC.
By JOSEPH V. CONNOLLY

3027 [P-4 for ident., P-4 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

It is hereby agreed between the parties hereto, this 26th day of April, 1933, that the contract between them dated the 4th day of September 1930, and subsequently amended by letters dated August 23, 1930 and October 21, 1932, is extended for a period of two years; that is, from September 8, 1934 to September 8, 1936.

It is further agreed that International Color Printing Company, by giving notice six months in advance, may extend this agreement and all of its terms and conditions for an additional period of one year; that is, from September 8, 1936 to September 8, 1937.

In consideration of this extension of contract International Color Printing Company agrees to pay to King Features Syndicate, Inc. Four Hundred Dollars (\$400.00) per month beginning with the 10th day of May, 1933, each monthly payment to be made on or before the 10th day of the month, which said sums shall be credited to the account of El Mundo of Havana with King Features Syndicate, Inc., and which account is hereby accepted to be \$17,431.31. It is understood and agreed that this monthly payment of Four Hundred Dollars (\$400.00) will be made by International Color Printing Company with the understanding that International Color Printing is given two million (2,000,000) four-page comic supplements weekly to print, under the terms of the contract, and that the sum of Four Hundred Dollars (\$400.00) per month shall be reduced each month in proportion to any reduction from the minimum run of 2,000,000 comic supplements per week. Said reduction is to be computed on the basis of each 100,000 reduction. For each said 100,000 reduction in the number of supplements below 2,000,000 the monthly payments to be made by International Color Printing Company are to be reduced one-twentieth.

It is understood and agreed that the indebtedness of El Mundo to King Features Syndicate, Inc. is \$17,431.31 as of this date, and that the payments to be made by International Color Printing Company to King Features Syndicate, Inc. shall cease after this account has been satisfied.

3028 It is understood and agreed that International Color Printing Company, in agreeing to make payments on the account of El Mundo in this instance, assumes no liability with respect to any other obligations of El Mundo with King Features Syndicate, Inc., International News Service, Inc., or any affiliated organization, and King Features Syndicate, Inc. agrees not to hold International Color Printing Company liable for any such future obligations subsequent to the date of this instrument.

King Features Syndicate, Inc. hereby assigns to International Color Printing Company its claim against El Mundo in the amount of \$17,431.31 with the understanding that this assignment shall be effective only in the amount that International Color Printing Company has paid on this account at the time that International Color Printing Company avails itself of such assignment.

In figuring any reduction in the monthly payments on the basis of the reduced run, it is agreed that the reduction shall be computed on the average weekly run for the preceding month, and that there shall be no reductions if the average run for the preceding month equals 2,000,000.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

KING FEATURES SYNDICATE, INC.
By JOSEPH W. CONNOLLY

Witness:

INTERNATIONAL COLOR PRINTING COMPANY.
By JOSEPH J. GORMAN, *Secy.-Treas.*

Witness:

3029

_____ for ident., PX5 in evid.,
H. T. Noel, Official Report, U.S. District Court.

WILKES-BARRE, PA.,
June 1st 1940.

KING FEATURES SYNDICATE, INC.,
235 East Etaon Street,
New York, N.Y.

GENTLEMEN: With the changes covered in the following paragraphs, International Color Printing Company agrees to an extension of its present printing contract with King Features Syndicate, dated September 4th, 1930 and subsequently amended by letters of August 20th, 1930 and August 21st, 1932 and further extended by an agreement date April 26th, 1933, for a period of three years from May 13th, 1940 and thereafter until either party has given to the other party six months notice, in writing, of its desire to terminate it.

International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) percent of its supplement printing requirements.

The printing of New York Sunday Mirror is to be separate and apart from this agreement.

The schedule of prices for weekly printings from May 13th, 1940 to the end of the period of this contract will be as follows:

For the first 500,000 four-page standard size supplements or their equivalent, \$3.0841 per thousand;

For the next 250,000 four-page standard size supplements or their equivalent, up to 750,000, \$2.9841 per thousand;

For the next 250,000 four-page standard size supplements or their equivalent, up to 1,000,000, \$2.7141 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,100,000, \$2.6641 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,200,000, \$2.6141 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,300,000, \$2.5541 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,400,000, \$2.5241 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,500,000, \$2.5041 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,600,000, \$2.4941 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,700,000, \$2.4841 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,800,000, \$2.4741 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 1,900,000, \$2.4641 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,000,000, \$2.4541 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,100,000, \$2.4441 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,200,000, \$2.4341 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,300,000, \$2.4241 per thousand;

For the next 100,000 four-page standard size supplements or their equivalent, up to 2,400,000, \$2.4141 per thousand;

For all four-page standard size supplements or their equivalent over 2,400,000 up to 10,000,000, excluding booklets and the New York Mirror, \$2.4041 per thousand;

For all four-page standard size supplements or their equivalent over and above 10,000,000, exclusive of booklets and New York Mirror \$2.3791 per thousand.

It is understood and agreed that special circumstances and quotations apply to printings for certain customers and 3031 for such reason special rates will be provided. Additional charges or deductions shall be made in accordance with schedule of special rates already in effect. This schedule shall be subject to change upon approval of proper agents of King Features Syndicate and International Color Printing Company from time to time as conditions or circumstances necessitate.

All rates quoted herein are based on present cost of 30 newsprint, 30 $\frac{1}{4}$ " wide at \$51 per ton delivered at Wilkes-Barre, Pennsylvania or Peoria, Illinois. As at present, any increased cost or saving resulting from change of cost of newsprint shall be passed on to King Features Syndicate and shall be added to or deducted from the said schedule of rates.

Sixty-four page quarter size booklets up to 1,555,000 monthly will be billed at the regular contract rate of \$2.4041 for each equivalent of a four-page standard size supplement. For printing of all sixty-four page quarter size booklets over 1,555,000 monthly the International Color Printing Company will send to King Features Syndicate a credit memorandum of ten (10c) cents per thousand sixty-four page quarter size booklets.

Other working arrangements covered in previous contracts and not changed by this exchange of letters will be continued during the extension of the old contract.

Very truly yours,

JOSEPH J. GORMAN, *President.*
International Color Printing Co.

3033 [——— for ident. P-7, in evid., H. T. Noel, Official Reporter, U.S. District Court.]

WILKES-BARRE, PA.
June 22, 1940.

KING FEATURES SYNDICATE, INC.,
New York, N.Y.

GENTLEMEN: This is our acceptance of suggestion contained in your letter of June 5th, 1940 to the effect that second paragraph of our letter dated June 1st, 1940 which read as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements."

Should be eliminated and the following paragraph substituted:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements, except in the event of emergencies such as the possibility of a newsprint shortage, strikes, or other plant difficulties."

Very truly yours,

JOSEPH J. GORMAN, *President,*
International Color Printing Co.

3034 [P-10 for ident., P-11 in evid., H. T. Noel, official reporter, U.S. District Court.]

JANUARY 4, 1954.

Memorandum:

Walter Koessler phoned me early this morning from Buffalo. He told me he had seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica. At the same time he told me that he discouraged Bitner from having Greater Buffalo print the Binghamton Press run, saying that KFS could handle that better than he could. Koessler told me that Bitner replied "That's the way I would like it."

Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses but he didn't think they were worth much. At least, he couldn't use any of them. Later I told Mr. Gorman about this and he was not interested in the presses. Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages at Utica and this is something we may be able to use to advantage.

Mr. Hagan, I believe, has an appointment here in New York today with Messrs. Cruickshank and Bitner.

FJN:ML

3035 [P-11 for ident., P-11 in evid., H. T. Noel, official reporter, U.S. District Court.]

KING FEATURES SYNDICATE,
235 East 45th Street,
New York 17, N.Y.
Tel. MUrray Hill 2-5600,
Cable Address Kingsyn, NY,
April 15, 1954.

From: F. J. Nicht.

To: Ward Greene.

DEAR MR. GREENE: There are a few things I would like to pass along to you for your information in connection with our ready-print business so that you will be brought up to date.

Our relations with Greater Buffalo Press have been working out splendidly and I have reason to believe that we can gain still further by expanding our relations with them.

As a result of the increased rate being put into effect by ICP, the Syndicate will be up against an additional outlay on this account running somewhere around \$3,000 weekly in round figures. I am doing everything possible to bring down this amount. One way I think I can contribute will involve the transfer of three, four or five of our readyprint runs to Greater Buffalo. If this is done, and if I can do it the way I think it can be done, we will save somewhere from \$500 to \$700 a week and maybe more. But I think it should be done. It will result in the expansion of our business with Greater Buffalo and perhaps put our eggs in more baskets. ICP isn't going to like this but if we can secure lower prices elsewhere I certainly think we should obtain them. I am going to see the Greater Buffalo Press people during Convention Week and I have plenty to take up with them.

Speaking of Greater Buffalo Press, here are a couple of ways in which our cooperation is worked out. The Gannett papers at Utica and Binghamton gave up the printing of their comic supplements in their own plant. In order to obviate price-cutting and the usual nastiness that attends competitive situations, we agreed to let the Greater Buffalo Press print the Utica run and we took the Binghamton Press run. In another instance at Waterloo, Iowa, the paper was in the market for printing of a six-page standard size section, which is poison to ICP, and their printing price to us is too high. Mr. Koessler of Greater Buffalo

and I got together on this. He took the printing of the supplement but agreed to pay us \$50.00 a week, which we are billing against Greater Buffalo Press for "special mat services." We are going to be hit hard as a result of the reduction in the MIRROR printing rate. We have some other competitive printing situations where we may have to suffer rate decreases.

The matter of the Southern printing station is still up and I don't know what is going to happen in that connection. I have an appointment during Convention Week with Sam Bloom who is flying up from Texas to talk with me about what I suspect is his interest in the establishment of a printing station in Texas. If my suspicion is correct and if he is sponsoring this move and it results in the establishment of a competitive printer in Texas, we are likely to be seriously hurt. Tomorrow I have an appointment with Mr. Chambers of the Dallas Times Herald and I suspect, too, that he wants to talk about this same thing. We print the Dallas Times Herald supplements now at Fort Worth.

After Convention Week I'd like to discuss our readyprint business with you again.

Sincerely yours,

F. J. NICHT.

FJN:ML

3037 [P-12 for ident., P-12 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 21, 1954.

Memorandum:

I had breakfast with Walter Koessler and Bob Lalor of Greater Buffalo Press. I think we covered about everything that could be discussed up to this time.

Koessler is very definitely thinking of establishing a Texas printing plant and it will probably be at Lufkin. I was able to develop the fact that they probably would not start such a plant in Texas on the basis of printing the Dallas News, Houston Chronicle and San Antonio News & Express only. They would need much more production than that. It was disclosed they had been talking to the New Orleans Times Picayune, Oklahoma City Oklahoman & Times and Memphis Press Scimitar, just as we have. It can be assumed, therefore, that if they got

some or all of this new business it would probably justify the Texas plant.

On the other hand it was developed that if we joined forces, the Texas plant would undoubtedly be assured for in this event, in addition to the three big Greater Buffalo Texas runs, the plant would also print the Houston Post, maybe the Times Herald, and perhaps we could get the San Antonio Light interested and on top of that we might be able to transfer some other business to the new plant such as Shreveport. This will have to be studied.

On this basis we would have to work out some sort of a selling arrangement with GBP. They would want to hold their own business, of course, and print whatever new business we could give them but on what basis the latter would be handled is something that would have to be discussed. All of this could very easily have a harmful effect on ICP's business in the Southwest and still further diminish their volume.

I confirmed again the figures Mr. Koessler gave me recently for the printing of Erie and some Ohio runs and he will be prepared to take that over on very short notice. The next step in this connection would be for us to try to make new long-term contracts with Toledo, Youngstown, Erie, and perhaps Springfield, Missouri.

Koessler brought up a very interesting matter, one that has been in our minds all along, but obviously he is going to work on it himself and that is to try to get Eastern Color to agree to leave their business alone. We, on our part, should try to accomplish the same thing. I will try to see Mr. Pape some time this week if possible. If such a plan could be carried out it will still further stabilize the supplement printing business and eliminate price-cutting tactics.

After things settle down I think that I should go to Buffalo and work things out on the ground finally and Jimmy Burns should go along. I brought up the matter of the Fargo printing which is done by Greater Buffalo through NEA and I
3038 don't think we should go after this printing. If we can sell publication rights on some of our other pages, all well and good, but certainly the printing should be left alone. Koessler also told me that they weren't working at all closely with NEA and have no intention of doing so from now on. Koessler also said he understands the Polish outfit in Buffalo may be having financial difficulties. Be sure to look up this

account and tell Mr. Gordon to give them the works if they don't come through. Koessler also told me he understands the Wilmington Star has discontinued publication. Let's verify this. If this is true it could have a bearing upon the Wilmington printing plant.

FJN:ML

3039 [P-13 for ident., P-13 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th Street,

New York 17, N.Y.,

Tel. Murray Hill 2-5600,

Cable Address KINGSYN, N.Y.,

May 26, 1954.

To: Ward Greene

From: F. J. Nicht

DEAR MR. GREENE: This memorandum is intended as a final review and summary of the readyprint situation.

For more than two years I have been doing everything within my power to strengthen the Syndicate's position in this important field. From time to time I have outlined definite plans. These have embraced the possibility of establishing supplement printing plants in San Francisco, in Texas, or in the South. They have also included a consideration of purchasing International Color Printing Company. I have regarded the protection and expansion of the Syndicate's readyprint business as of the utmost importance because anything that weakens this enterprise of the Syndicate, weakens the Syndicate's business as a whole.

I endeavored to point out and predict what might happen if we were unable to accomplish anything with respect to these plans. Now, some of those predictions have come to pass. Greater Buffalo Press is planning to establish a supplement printing station in Lufkin, Texas.

Failing to get the support for what I had in mind and referred to above, I found it necessary to proceed along other lines and do whatever I could for the protection and advancement of the Syndicate's interest in the readyprint field. And in connection with this, I can report as follows.

I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize. These deals, unwritten, include a very broad cooperation between Greater Buffalo Press and KFS. For example, we were after certain Gannett supplement printing, two runs involving Utica and Binghamton. By mutual consent, GBP took Utica and we took Binghamton. With the agreement of Greater Buffalo we stepped out of the picture at Waterloo, Iowa, which is about a 50,000 run. I considered it good business to step out of the picture due to ICP's high costs and inflexibility in printing so-called odd size sections. The Waterloo run is a six-page standard and that's a cinch for Greater Buffalo to print but difficult for ICP. GBP lined up this business with our foreknowledge and consent and even encouragement and we get \$50.00 a week out of it. That's net. I finally succeeded in getting what I would call a wholesale rate on any supplement printing we turn over to GBP.

I am now in the process of transferring three or four good size runs to Buffalo which will save the Syndicate several hundred dollars weekly because the rate I have been able to get from them for this printing is less than we pay Wilkes-Barre at present. Mr. Gorman has been apprised of this and I am sure he understands he is likely to lose other business because of inability to meet the rates I have been able to obtain from GBP.

In addition, as a result of recent meetings, I have been able to come to an understanding with GBP involving their proposed Lufkin plant. They have agreed to give us a cut of 50 cents per thousand (based on circulation) on their present business in Texas which includes the Dallas NEWS, San Antonio EXPRESS & NEWS and Houston CHRONICLE. They have also agreed to give us the same cut on any additional business they negotiate themselves for this plant. On top of that we will receive 50 cents per thousand on any of our present supplement business we may turn over to the Lufkin plant, the Dallas TIMES HERALD, Houston POST, for instance, and, moreover, give us a 50 cents per thousand advantage on any prices they establish for printing on their own. That really means a total of \$1.00 per thousand. To put it another way, we can expect to receive from GBP a cut of somewhere between \$300.00 and \$400.00 a week net on their three existing Texas runs. This

sort of carries out the theory that if you can't lick 'em you might as well join them and that is what we have done in this instance. This is due to our own failure to have a Texas plant.

Furthermore, I believe I have succeeded in discouraging Greater Buffalo Press from doing any more business with NEA. We also have an understanding with them that we will not solicit any business they have and they will not solicit any business we have. This results in stabilization. I hope you agree that we have done the best possible under the circumstances but I still think it was a mistake for us not to have our own plant in Texas. There isn't room for two printing plants in that State. Hence, we were beaten to the post.

I am still working on the possibility of having a Southern printing plant. Mr. Gorman is looking into this again right now at Jacksonville and Birmingham. However, I have no confidence in ICP's aggressiveness in this or any other matters involving capital expenditure or expansion. I am very much discouraged with the outlook for ICP. And, in passing, again I say we ought to think further about taking them over or getting someone else to take them over and I have that phase in mind also. In self-protection I think it is wise for the Syndicate to establish good relations with its competitors even if injurious to ICP. I want to assure you I am proceeding with extreme caution.

I have also had meetings with the operators of the Wilmington STAR COLOR PRESS and expect to be able to establish a relationship with them that will be to the Syndicate's advantage. They are a potential competitor. I have a hunch that I might be able to encourage them to buy out ICP. If we are able to make final arrangements with Wilmington, there are a number of nearby runs we might turn over to them, especially where the client would gain a lower transportation rate. Naturally no deals would be made unless the Syndicate's profit and security were increased.

I believe, too, I have succeeded in convincing Wilmington that they should do no business with NEA, always our arch enemy.

I have it in mind to try to make a deal with Eastern Color at Waterbury so that they will find their existing business protected and leave our business alone. They have given us many headaches because of their low printing prices. Water-

bury has suffered grievously as a result of their loss of a great volume of booklet printing.

These kind of deals I regard as protection to the Syndicate and give promise of additional readyprint profit. As a result of the understandings between us and some of our readyprint competitors we do have a great deal to gain and I hope you will agree that it might make all of us look silly if supplement printing proposals are sought from these competitors by organization newspapers without our foreknowledge. There is good reason to believe that these competitive printers are likely to tip us off anyway.

As you know, our readyprint profit has been decreasing. This has been due to some circumstances beyond our control, the MIRROR matter being one. Competition principally through the instrumentality of NEA has forced us to reduce some of our readyprint rates in order to save the business and this is particularly true in the South. I hope we will have this under control to some extent from now on.

In conclusion, I hope it will be possible for the Syndicate to persuade at least some of the Hearst newspapers to turn over supplement printing to us. I am confident we will be able to save them money and also further strengthen our position in the supplement printing field.

Sincerely yours,

F. J. NICHT.

F. J. NICHT.

FJN:ML

3042

[P-14 for ident., P-14 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th Street,

New York 17, N.Y.,

Tel. MUrray Hill 2-5600,

Cable Address Kingsyn, N.Y.,

January 19, 1954.

To: Ward Greene.

From: F. J. Nicht.

DEAR MR. GREENE: I am looking forward to talking with you about several matters, especially our readyprint business, but

meanwhile there is a thought or two I'd like to commit to writing.

I hope I am right in thinking that we have absorbed most of the shock in connection with our readyprint business. We have lost some business in this field unavoidably such as the two NOVEL A WEEK runs in Newark and Harrisburg. We have had to reduce some rates and our readyprint costs have gone up and will probably go up still further shortly.

Lacking certain support which I think should have been given to us, I have, as you know, been able to make a sort of an unofficial arrangement with Greater Buffalo Press which, up to this point, has worked to our advantage as well as theirs. For example, they got the run of the Utica Observer-Dispatch, a Gannett newspaper, and we got the Binghamton PRESS run, also a Gannett newspaper. In this respect the arrangement has worked out even better than I thought and it seems to be working out in other directions also.

Now, I would like to again bring up the possibility of purchasing International Color Printing Company. Heretofore we have been thinking in terms of a million dollars or so, but I have a hunch that if we offered them \$500,000, it is possible we might get somewhere. That certainly isn't a lot of money and if it were still a bit more, it wouldn't be a lot of money. Furthermore, it would seem that the purchase price might be spread over a period of years.

I think it would also be wise for the Syndicate to think about the possibility of getting hold of Acme Color Printing Company at San Bernardino.

Sincerely yours,

F. J. N.
F. J. NICHOL.

FJN:ML

3043 [P-15 for ident., P-15 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,

302 Grote Street

Telephone BEdford 6410

Web Press Color Printing,

Buffalo 7, New York, June 2, 1955.

Mr. F. J. NICHT,

King Features Syndicate,

235 E. 45th St., New York City.

DEAR FRANK: These are the points discussed in New York on which we agreed could go into a contract, between King Features Syndicate and Greater Buffalo Press, Inc.

1. Greater Buffalo Press, Inc., will purchase International Color Printing Company, and assume a printing contract which is presently being negotiated between International Printing Company and King Features Syndicate.

2. In a contract which King Features Syndicate will negotiate with Greater Buffalo Press, Inc., the contracts and business which each company presently hold, will continue to be held by the same parties.

3. Greater Buffalo Press, Inc., will grant to King Features Syndicate, exclusive sales rights on all comic newspaper runs up to 200,000 copies, at a cost to be specified in the contract to be negotiated with International Color Printing Co.

4. Greater Buffalo Press, Inc. will grant exclusive sales rights to King Features Syndicate on all runs in excess of 200,000, with the exception of the Philadelphia Bulletin, and the Des Moines Register and Tribune. The cost to King Features Syndicate on runs of 200,000, is to be \$5.30 per M, with a reduction of one cent per thousand for every thousand above the 200,000 figure. The Greater Buffalo Press, Inc. will quote a price of \$5.42½ for a four page section to the accounts to which it seeks to sell comics.

5. In the plant which the Greater Buffalo Press, Inc., establishes at Lufkin, Texas, exclusive sales rights will be granted to King Features Syndicate with the exception of the Oklahoma City Times, and the Pappert Group of newspapers. The cost of

\$5.30 per M for a four-page section, on runs of 200,000 or more will apply to runs produced at the plant at Lufkin, Texas. For runs under 200,000, the Greater Buffalo Press, Inc., will prepare a schedule of prices which will be mutually acceptable to the Greater Buffalo Press, Inc., and King Features Syndicate.

6. The Greater Buffalo Press, Inc., is to be the exclusive Printer for King Features Syndicate on runs of 200,000 or more, with the exception of such runs as King Features Syndicate now is contracting to other parties. At the expiration of these contracts, the Greater Buffalo Press, Inc., is to become the exclusive Printer. Contracts with International Color Printing Company are excluded from this provision.

7. The contract is to be for ten years.

8. A provision should be contained in the contract that the terms and conditions can be changed, by mutual consent, in matters of advantage to both parties.

9. Included in the contract, is to be the scale of wages presently paid, and a provision that the labor items included in the \$5.30 base price for a four-page section, are to be increased or decreased in proportion to the increase or decrease of labor costs. A like provision is to be made to compensate for an increase or decrease in the cost of newsprint.

I think this covers all the essential matters, and we are ready to go ahead with an arrangement based on these proposals.

Kindest regards,

GREATER BUFFALO PRESS, INC.,

J. W. Koessler

J. W. KOESSLER, *Pres.*

JWK/K

3045 for ident., P-16 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
302 Grote Street
Telephone BEDford 6410,
Web Press Color Printing,
Buffalo 7, New York, June 13th, 1955.

Mr. FRANK J. NICHT,
King Features Syndicate,
235 E. 45 St.,
New York City, N.Y.

DEAR FRANK: These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate, and The Greater Buffalo Press, Inc.

1. The Greater Buffalo Press, Inc., will purchase International Color Printing Co., and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company.

2. The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press, and King Features Syndicate presently have.

3. The Greater Buffalo Press, Inc., and International Color Printing Co., will grant King Features Syndicate exclusive sales rights on all new business with these exceptions:

1. The Philadelphia Bulletin
2. The Des Moines Register Tribune
3. The Oklahoma City Oklahoman
4. The Pappert Group of Newspapers

4. The cost to be charged King Features Syndicate for printing four color, standard size, comic newspaper supplements in individual runs of 200,000 or less, is the price provided in the contract between International Color Printing Co., and King Features Syndicate.

5. The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Buffalo and Dunkirk plants, for individual runs of four color, standard size, comic newspaper supplements is \$5.21 per M. The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.67 per M.

3046 6. The cost to be charged King Features Syndicate by The Greater Buffalo Press, Inc., at its Lufkin, Texas plant for individual runs of 200,000 four color, standard size, comic newspaper supplements is \$5.15 per M. The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.61 per M. The cost of individual runs of other quantities for standard size, four color, newspaper supplements at the Lufkin plant are:

175 M	-----	\$5.23
add M's	-----	4.61
150 M	-----	\$5.34
add M's	-----	4.61
125 M	-----	\$5.47
add M's	-----	4.61
100 M	-----	\$5.50
add M's	-----	4.61
75 M	-----	\$5.69
add M's	-----	4.61
50 M	-----	\$6.05
add M's	-----	4.61
25 M	-----	\$6.77
add M's	-----	4.61

A standard size newspaper comic page is $14\frac{1}{2}$ " x $21\frac{1}{2}$ ". An individual run is one in which the makeup of each page is composed of new material.

7. In the event of an increase or decrease in the cost of labor, the labor items in the base prices are to be increased or decreased in the same percentage as the increase or decrease in the cost of labor. The labor items in the base prices are:

	200,000	
Makeready	-----	\$.54
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$1.70

	175,000	
Makeready	-----	\$.62
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$1.78

3047	150,000	
Makeready	-----	\$.73
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$1.89

1436

	125,000	
Makeready	-----	\$.86
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.02
	100,000	
Makeready	-----	\$.89
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.05
	75,000	
Makeready	-----	\$1.08
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.24
	50,000	
Makeready	-----	\$1.44
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$2.60
	25,000	
Makeready	-----	\$2.16
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$3.32

8. In the event of an increase or decrease in the cost of materials, the material items in the base prices are to be increased or decreased in the same percentage as the increase or decrease in the cost of materials. These material costs at Lufkin are:

Newsprint	-----	\$3.05 per M
Ink	-----	.40 per M

The newsprint cost is for 321b basis weight. The ink cost is for the standard ANPA colors of, yellow, red, blue, and black.

The items of labor costs at the Buffalo and Dunkirk plants are:

	200,000	
3048 Makeready	-----	\$.54
Press run	-----	1.08
Packaging	-----	.08
Total	-----	\$1.70

A schedule of present labor rates is to be attached and made part of the contract.

The items of material costs at the Buffalo and Dunkirk plants are:

Newsprint	-----	\$3.11
Ink	-----	.40

9. For the period of this contract, The Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate.

King Features Syndicate on its part will process all its contracts for printing four color, newspaper comic supplements through The Greater Buffalo Press, Inc., and International Color Printing Co. The exception to this provision is the contract which King Features Syndicate holds with the Dallas Times Herald. At the expiration of this contract, and at such time as King Features Syndicate can do so without business embarrassment, King Features Syndicate will process this printing at the Lufkin, Texas plant of The Greater Buffalo Press, Inc.

10. The provisions contained in paragraph No. 9 may be altered by mutual consent of The Greater Buffalo Press, Inc., and King Features Syndicate, where the interests of both parties are mutually served. Any and all provisions of this contract may be changed by mutual consent in the mutual interests of both parties.

11. The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of The Greater Buffalo Press, Inc., in the event The Greater Buffalo Press, Inc., offers its business for sale.

This contract is to be for a period of ten years.

Kindest regards,

GREATER BUFFALO PRESS, INC.,

J. W. Koessler

J. W. KOESSLER, *Pres.*

JWK/K

3049 [P-17 in evid., H. T. Noel, Official Reporter, U.S. District Court]

THE GREATER BUFFALO PRESS, INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.
January 17, 1956.

MR. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, N.Y.

DEAR FRANK: I am returning second draft of the proposed contract.

The only thing I have changed is the exclusive commitments on the part of both parties.

Our attorneys tell us this is dynamite. However we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other business as is available—King Features to act as the selling agent and the Greater Buffalo Press as the Producer.

In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent.

In such cases if the Greater Buffalo Press is successful in securing the account the Greater Buffalo Press will pay to King Features a minimum of 50¢ per thousand copies on the account thus secured.

Prices and wage scales will have to be adjusted to the increase in the price of newsprint and adjusted to the four percent labor increases we have been subjected to for the year of 1956.

Kindest regards,

(S) J. W. Koessler
J. W. KOESSLER,
President.

JWK:bv
Encl.

3050 [P-18 for ident., P-18 in evid., H .T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEdford 6410,

Buffalo 7, N.Y.,

October 31, 1956.

Mr. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, N.Y.

DEAR FRANK: This, in substance, is the position of the Greater Buffalo Press Inc., as expressed at our meeting, Tuesday, October 23rd.

1. The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate.
2. The Greater Buffalo Press will present King Features Syndicate with a competitive price, for its solicitation of new accounts.
3. The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business, which it secures by solicitation on its own account.
4. Our definition of new business is that which no operator in the comic printing business presently holds.

Such an arrangement in my view protects King Features in its present holdings, gives the syndicate an even break in the securing of new business, and guarantees King Features a share in any business secured through the efforts of the Greater Buffalo Press.

Kindest personal regards,

(S) J. W. Koessler
J. W. KOESSLER,
President.

JWK:bv.

3051 [P-19 for ident., P-19 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Memorandum:

JUNE 23, 1955.

During my telephone conversation with Mr. Koessler at Buffalo yesterday he advised me that Messrs. Gorman and Govin were due to be in Buffalo today.

It looks like a deal will undoubtedly be consummated. I made it clear to Koessler that whatever was done should be made with the understanding that the purchase is contingent on the outcome of the pending contract negotiations between KFS and GBP. Koessler was very frank in saying that he thoroughly understood.

I don't think any trouble will ensue but I would feel better if we had been able to close all agreements simultaneously.

FJN:mec

3052

[P-20 for ident., ——— in evid., H. T. Noel, Official Reporter, U.S. District Court.]

April 13, 1955.

3052 Memorandum:

These are the basic conditions on which a deal with GBP would hinge.

1) We must be exclusive sales agents. If we couldn't be the identity which we have had and preserved over the years would be destroyed and that's one of our greatest assets. It might be that Greater Buffalo's identity with their existing clients could be preserved, but not even this is certain. If this fundamental couldn't be agreed to there would be little sense in our going any farther. GBP, of course, might hold the right to sell commercial printing or booklets if it has or wants any of this work.

2) We should have a fixed printing rate per thousand. I don't like the idea of "continuing as we have." Let's have a per thousand printing rate which is fixed. Let's call it \$5.23 or \$5.13, whatever we can agree on. Maybe there would have to be some special charges on smaller runs. Details in this connection could easily be worked out. If GBP can print for us at little over \$5 per thousand now and they do, then on the acquisition of 30

million four's they ought to do as well, or better, but we must recognize in all fairness the extra cost in printing small runs.

I see no logic in any understanding concerning new printing on the basis of 50 cents per thousand based on circulation instead of on a 4-page standard size unit basis.

Koessler ought to save money if we were his sales agent. He wouldn't need a Chicago office, if he has any. Billing and everything would be simplified and he'd save travelling expense and too many other items to mention.

3) The contract, if we can agree on fundamentals should be for a long term, not less than 10 years.

Koessler ought to be impressed with the fact that we have important possibilities to offer. For example, there is the printing with Comic Weekly and the establishment of a Coast printing station. He would also acquire our proposed southern plant.

Combinations such as we have in mind probably would make it possible for us to obtain increases in printing prices for him such as St. Louis, Kansas City, Cleveland, etc.

3053 If this whole thing falls through then we would either continue our friendly contacts, but we would be competitors and there is always the danger of a price war which would probably be more disastrous to him than it would be for us as he has undoubtedly lost some business lately. Koessler conceivably could look forward to a gross business running from 30 to 35 million dollars annually.

Why is he so difficult to reach?

What happened to his AP printing?

Why does he stir things up in Texas?

FJN:mec

3054 [P-21 for ident., in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MARCH 25, 1955.

To Ward Greene

From: F. J. Nicht

DEAR MR. GREENE: Developments affecting our readyprint business have now reached the point where I deem it advisable to summarize what has happened, and is likely to happen.

As I see it, this is about how it stacks up:

1. KFS can continue to go on under its present arrangement with International Color Printing Company.

2. KFS (or the Hearst organization) can buy out International Color Printing Company.

3. International Color Printing Company can sell out to Greater Buffalo Press, or for that matter someone else.

Regarding No. 1:

If the Syndicate elects to continue with International Color Printing Company on much the same basis as in the past, it would undoubtedly involve an increase in our printing cost because ICP insists they could not agree to continue printing for us at the present rate. They claim they could not do so except under a new long-term contract and would have to have an increase in their printing rate, particularly if they were obliged to establish a southern printing plant. This latter has been pretty well agreed to inasmuch as the Hearst organization has signed a long-term contract with the Coosa River people based on newsprint consumption for the printing of comic supplements at a southern printing plant, most likely to be established in Alabama.

An increase in our printing rate on the basis of continuing with ICP could cost the Syndicate anywhere from \$50,000 to \$100,000 annually, or even more.

The establishment of a southern printing plant would probably necessitate an eventual capital expenditure of from \$600,000 to \$800,000.

3055 Regarding No. 2:

If International Color Printing Company were to be purchased by the Hearst interests it could probably be done at a price of approximately \$635,000, spread perhaps over a ten year period. This procedure might save the Syndicate money because we would eliminate a second profit, that of the present producer, namely ICP. In this connection it should be borne in mind, however, that a further expenditure would be necessary for the establishment of a southern printing plant, and as indicated above, this might involve \$600,000 to \$800,000.

Regarding No. 3:

Greater Buffalo Press is prepared to purchase International Color Printing Company and the price would be approximately \$635,000. If this were to occur, then it would be highly important that KFS be thoroughly protected. This protection might be accomplished through a long-term selling contract with Greater Buffalo Press. Under such a contract, KFS should be

assured of the continuation of its selling identity and of the continuation of control of existing readyprint business.

In this statement I am not intending to over-simplify the working out of details. At the moment, I am dealing with principles only. Many details would have to be worked out, such as preservation at least of present costs, protection of our direct client relations, an understanding regarding new business procedures, etc.

The owners of International Color Printing Company are now quite definitely anxious to sell. They can hardly sell without our consent and cooperation. We have had many meetings among ourselves and with the representatives of ICP and Greater Buffalo Press. These meetings have up to this time involved the overall principles and not the many details.

The time has now come for us to decide what we want to do. If management prefers a carrying out of plan No. 3, I am prepared to proceed if given a green light. Even in this event, there is a possibility of encountering opposition in the effort to protect the interests of KFS on every conceivable point under a long-term selling contract with the prospective owners.

Greater Buffalo Press realizes they can hardly continue purchase plans without the approval of KFS and Greater Buffalo Press has indicated they would like to talk further with me about this quite conclusively next week.

I shall await further instructions.

Sincerely yours,

FJN:mec

F. J. NICHT.

3056 [P-22 for ident., P-22 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 21, 1954.

Memorandum:

Mr. Greene and I met with Mr. Berlin in his office yesterday and also present were Mr. Gortatowsky and Mr. Muller.

We outlined the status of the readyprint field as we size it up at present and expressed our opinion as to what was likely to happen. The matter was gone into rather exhaustively.

Mr. Berlin repeated what he had told us before—that he thought it would be a mistake for us to own our own supplement printing plant, that it would be better for us to continue as a selling agent.

I outlined at some length what had been happening in the southwest and what is likely to happen in the south. I pointed out what Greater Buffalo proposed to do at a Lufkin, Texas plant. I pointed out in chart form just what our southern business meant in dollars and cents, gross and net. I expressed the feeling that if we didn't go into the south with a plant strategically located perhaps at Coosa River, or some nearby point that some competitor probably would go in and if we were beaten to the draw a high percentage of our readyprint business, about 25%, would be under threat. I believe I succeeded in having those present share the same feeling.

The question of using idle Hearst presses came up again, of course, but I said that this was something for Mr. Gorman to decide, that it was very likely he had his own equipment plans and would probably move some of it from Wilkes-Barre to a new plant if he got one.

I think the figures I submitted concerning our total readyprint gross and net made a big impression for Mr. Berlin, referring to our net in the southern business, said that was something that had to be protected.

I made a point of the fact that a southern printing station would not only be a protection for our present business but there might be possibilities for expanding with new business also. Stressed the point that I believe the tendency in the supplement printing field was in the direction of decentralization of plants.

There was quite some discussion regarding the purchase of International Color Printing Company and this led Mr. Berlin to point out that he thought Cuneo might be interested in taking ICP over and I mentioned the possibility of other printers being interested in ICP but if anything were brought about along that line, it should only be done on a basis where KFS would be in a position to control the newspaper accounts, as it does at present and as it has always done.

We discussed the relative merits of the various readyprinters and there was a feeling that ICP during recent years hadn't been as progressive as it should have been and that their plant facilities did not yield the flexibility that other printers, notably Greater Buffalo possessed. I stated that Mr. Gorman had recently made a survey in the south, visiting newsprint mills and that he was making a report that should be in any day.

Mr. Berlin seemed to feel that either we or ICP did not press the possibility of a New Orleans plant which was under discussion sometime ago, to a conclusion.

I acquainted the gentleman present with what I had
 3057 been able to do in making deals with competitive printers such as Greater Buffalo Press and Wilmington, Delaware; that I had reason to believe that World Color might join with us in the same kind of a deal. I explained the nature of our deal with Greater Buffalo in connection with their proposed Lufkin plant. I also expressed grave concern over the re-entry of World Color at St. Louis in the newspaper supplement printing field; that they had taken four runs from us and would undoubtedly become increasingly active.

When the question came up as to what ICP had to sell, I expressed the opinion that they had nothing to sell except physical equipment—that we took their output exclusively and that we control them lock, stock and barrel. Mr. Berlin wanted to know at what price I thought ICP might be purchased and I guessed the price might be $\frac{1}{2}$ or $\frac{3}{4}$ million. Mr. Berlin thought that that might be high because ICP's most important asset was its contract with us. At that point I pointed out that we had only a six months' contract with ICP and that if they were to expand on their own they would undoubtedly want a long term contract and there appeared to be general agreement that the making of such a long term contract would be desirable if ICP was ready to go ahead with expansion plans.

I brought up again the matter of lack of willingness on the part of ICP to expand heretofore because the owners didn't want to put up any more capital. If ICP is going to need capital, I gather that this might be forthcoming in some sort of way, not yet determined upon.

Before the meeting broke up it was definitely agreed that we would have another meeting, Wednesday, July 28. I am to arrange for Mr. Gorman to be present. Messrs. Berlin, Gortatowsky and Muller will also be present.

• • • • •
Notes for FJN

Up to this point it seems to me Mr. Gorman has made expansion considerations too difficult. Greater Buffalo stole a march on us, if their plans go through, by acting rapidly and directly with the Lufkin newsprint mill.

Personally, I'm afraid to see Cuneo in this picture.

Acquaint Mr. Gorman with what we have just done with respect to Fort Worth and Dallas **TIMES HERALD**.

Call Mr. Gorman's attention to Bowater plant in Tennessee. Could some kind of a deal be made with them? Isn't it likely that other printers are likely to see the possibilities in making a deal with Bowater?

We must pin down ICP to something definite. It seems to me that if a southern printing plant appears to be as advantageous as even Mr. Gorman thinks, that that would be the best way to solve our present problem—this rather than a change of ownership in ICP. The latter is likely to confuse our over-all problems at this juncture.

3058 I suppose one way in which to encourage ICP to open up a southern plant would be to arrive at an advantageous printing price with them. They will have the advantage of lower newsprint cost and there will be substantial transportation savings.

Maybe a southern plant would make it possible for ICP to consider the abandonment of the Peoria plant.

We must keep in mind the "Richmond differential difficulty."

Bear in mind Mr. Gorman's remark in his report of July 3—"I have no doubt that if we have a reasonably long contract with King Features and are reasonably certain of a fair profit, we should be able to obtain financing without too much difficulty."

Brief Mr. Gorman on what transpired at our meeting yesterday so that what he may have to say will not be contradictory in any way.

If the Kansas City STAR has stock in Coosa River plant, maybe they would like to have us print their supplements, but here we will have to be careful inasmuch as the STAR supplements are now printed by Greater Buffalo.

Can Mr. Gorman give me any further information regarding the rumor that Greater Buffalo Press is running into difficulties with the proposed Lufkin plant?

FJN:mec

3059 [——— for ident., P-23 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AUGUST 19, 1955.

Mr. FRANK J. NICHT,
King Features Syndicate,
235 East 45th Street,
New York 17, N.Y.

DEAR FRANK: Attached are three signed copies of agreement dated July 30th. I presume you will sign and return one copy for our files.

I would like to point out that in Section "A" of Article 7, Exhibit "A" is referred to as being dated "June 16, 1955." Although the rate in Exhibit "A" are those which were in effect June 16, 1955 this Exhibit is not actually dated. The following rates have gone into effect between June 16, 1955 and July 30, 1955, the actual date of the Agreement. These rates are not included in the original Exhibit "A" but should now be included and made part of the Rate Schedule:

Greenville, S.C., News—10-Page standard size section, two releases printed at one time, \$0.4058 per thousand four page standard size sections over contract.

Greenville, S.C., News—10-Page standard size section, one release double-plated, \$0.4058 per thousand four page standards over contract plus \$150, per printing.

Jackson, Miss., State Times—8-Page standard size comic section, \$50. per release over contract.

Norfolk, Va., Virginian Pilot—14-Page standard size section, one release double-plated, \$0.8261 per thousand four page standards over contract.

Norfolk, Va., Virginian Pilot—14-Page standard size sections, two releases printed at one time, \$0.1761 per thousand four-page standards over contract.

Regarding the handling of the Southern Transportation allowances, amounting to \$500.12 per week, which we at present allow on the weekly Wilkes-Barre Transportation invoice and is to cover transportation advantage which would have resulted from our establishing a Richmond plant. Under present contract schedule, we are billing King Features Syndicate for the first ten million printed a total of \$53,930.50. In order to take care of the Southern Transportation allowance, we will reduce

this amount by \$500.50 so that we will bill the first ten million at rate of \$5.3430 per thousand four page standards or a total of \$53,430.00. This is the rate which we show in Exhibit "A" and which is part of the new contract. When you have returned copy of signed contract to us, we will begin billing the first ten million at rate of \$5.3430 and will then discontinue allowing the \$500.12 on the transportation invoice.

Sincerely yours,

JOSEPH J. GORMAN.

3000 **AGREEMENT**, made this 30th day of July, 1955, at the City of New York, State of New York, between **KING FEATURES SYNDICATE**, Division of the Hearst Corporation, hereinafter called, "Syndicate", and **INTERNATIONAL COLOR PRINTING COMPANY**, hereinafter called "International."

First: The term hereof shall be for a period of ten years beginning on the 31st day of July, 1955, and shall thereafter renew itself for like periods unless either party notifies the other by registered letter at least two years before the end of any of said periods of its desire to terminate this agreement.

Second: International, at its plants in Wilkes-Barre, Pennsylvania or Peoria, Illinois, or at other plants which may later be operated by it, will print and prepare for shipping to the various clients designated by the Syndicate those quantities of colored supplements as the Syndicate may order. The total of such supplement printing shall be a minimum of seventy five per cent of the Syndicate's supplement printing requirements, except as provided in Paragraph SIXTH, or when both parties agree mutually to a lower minimum. All supplement pages will be printed with four colors, or less, as designated by the Syndicate. For the purpose of this agreement it is understood that a standard size page is fourteen and one half ($14\frac{1}{2}$) inches by twenty-one and one half ($21\frac{1}{2}$) inches when printed on Hoe presses and fourteen and one half ($14\frac{1}{2}$) inches by twenty-one and five eighth ($21\frac{5}{8}$) inches when printed on Goss presses.

Third: The Syndicate will supply, or cause to be supplied, to International the necessary matrices, or acceptable substitutes therefor, for the printing of comic supplements hereunder. International will print supplements in a proper and workmanlike manner satisfactory to the Syndicate, and will start printing as soon as practicable after receipt of matrices for such printing. The supplements hereunder will be printed from the least num-

ber of comic page matrices possible, however, the Syndicate will determine the pages composing makereadies. International will print comic pages and advertising pages comprising supplements, from the aforesaid matrices, only in accordance with instructions received from the Syndicate. International will

3061 deliver the supplements to a carrier designated or approved by the Syndicate, at the plate of printing, directed to the client and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the client will allow, to permit time of arrival as designated by the Syndicate.

Fourth: While International is printing at least the minimum percentage of Syndicate's supplement printing requirements as outlined in Paragraph Second above, International agrees that it will not produce or print comic supplements for any organization other than the Syndicate, and in no event without the written consent of the Syndicate.

Fifth: Should any dispute arise between the parties hereto, which cannot be resolved through discussions between the parties, it will be submitted to arbitration in accordance with the arbitration rules of the State of New York. Anything in such arbitration rules of the State of New York notwithstanding, the arbiters shall consist of two chosen by International, two chosen by Syndicate and a Chairman to be chosen by the other four arbiters, and the decision of said arbiters is to be final and binding upon both parties.

Sixth: The parties hereto shall be excused from total or partial performance hereunder because of, and for the duration of strikes, fire damage, accidents, acts of God, unavailability of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

Seventh: For the duration of this agreement rates for the various printings and related matters shall be as following set forth:

3062 A. All printings covered by this agreement shall be paid for in accordance with the established attached Rate Schedule marked Exhibit "A", dated June 16th, 1955, which is made a part hereof and that weekly settlement of the obligations between the parties hereto shall be had based thereon. International will supply the Syndicate with

a copy of all new labor agreements within fifteen days after signing by both International and union officers.

B. The rates for all new and additional printing placed with International after the effective date of this agreement shall be determined by agreement between the two parties.

C. Should any print order hereunder be changed in a degree which would affect production cost of such printing, new rate for such printing shall be determined by agreement between the two parties.

D. Various prices per thousand four page supplements are based upon the present contract price to International for newsprint of \$6.35 per hundred weight, or \$127.00 per ton delivered at printing station, for 32 pound basis weight newsprint paper, 29 inches wide, and it is expressly agreed and understood that the price of such supplements shall be readjusted in direct proportion, either upward or downward, as the price of newsprint sold under contract to International shall increase or decrease. All newsprint waste, based on International's experience, shall be included in calculating newsprint cost per thousand supplements. Exceptions to the above paper size, type of newsprint and basis weight are indicated opposite the newspapers listed in Exhibit "A" and the charge to the Syndicate therein set forth.

E. The Rate Schedule in Exhibit "A" may be opened for adjustment once each year, such adjustment to become effective January 15, of that year, provided notice of desire to make such adjustment is given by either party to the other 3063 not later than October 14, of the year preceding the January 15th on which it is desired to make adjustment. Otherwise the existing Rate Schedule shall continue in effect for another year. Increased costs, or savings, due directly to changes in terms of labor contracts will be passed on to the Syndicate by International and evidence of same must be presented in the form of labor contracts and labor cost figures. Changes in rates resulting from causes other than changes in labor contracts must be agreed upon by the two parties, it being understood that no part of savings resulting from improved methods and machinery need be passed on by International to Syndicate until the cost of improved machinery has been fully amortized.

F. The provision of sub-division "E" in no way supersedes the provision of sub-division "C".

Eighth: This agreement supersedes all previous contracts between the parties hereto, and contains all of the agreements and understandings of the parties with respect to the subject matter hereof. Any amendments or supplements hereto shall be in writing and signed by the parties hereto before becoming effective.

IN WITNESS WHEREOF The International Color Printing Company has caused this agreement to be executed by Joseph J. Gorman its President, and The Hearst Corporation, King Features Syndicate Division by Frank J. Nicht its General Sales Manager.

Witness:

(S) **RAYMOND K. ROGERS**

KING FEATURES SYNDICATE,

DIVISION OF THE HEARST CORPORATION,

By (S) **FRANK J. NICHT**

THE INTERNATIONAL COLOR PRINTING COMPANY,

By (S) **JOSEPH J. GORMAN, Pres.**

Witness:

(S) **JOSEPH T. CLINTON**

3064

JUNE 16, 1955.

EXHIBIT "A"

RATE SCHEDULE

In accordance with the provisions of Paragraph SEVENTH, Subdivision "A", to agreement between King Features Syndicate and International Color Printing Co. dated the 30th day of July, 1955, the following rates shall apply for each one thousand four-page standard size supplements, or equivalent, printed, wrapped and labeled ready for shipment f.o.b. printing station:

The first 10,000,000 four-page standard size sections, or equivalent, \$5.3430 per M.

Over 10,000,000 (excluding Mirror and booklets) four-page standard size sections, or equivalent, \$5.2989 per M.

New York Mirror (using 57½" newsprint rolls) four-page standard size sections, or equivalent, \$4.9108 per M.

Western Printing Company booklets (using 60" newsprint rolls) four-page standard size sections, or equivalent \$5.4043 per M.

It is mutually agreed that extra charges and/or allowances as listed herein will apply on the following printings:

Akron, Ohio, Beacon Journal—16-page standard size section—\$.05 per thousand four-page standards under contract.

Andalusia, Alabama, Covington Dispatch—8-page tabloid section—\$5.00 per release over contract.

Artesia, N. Mexico, Advocate—8-page tabloid—\$5.00 per release over contract.

Binghamton, New York, Press—To insert Family Magazine section into comic section there shall be an additional charge of \$1.80 per M insertions. Also, there shall be an additional charge of \$10.00 per release for transporting magazine sections from railroad station to plant.

Birmingham, Alabama, News—10-Page standard sections—\$.4058 per M four-page standards over contract.

3065 Birmingham, Alabama, News—14-page standard sections printed two releases at one time—\$.8664 per M four-page standards over contract.

Bluefield, W. Va., Telegraph—12-page standard size section—\$5.00 per release over contract.

Canton, Ohio, Repository—10-page standard sections, two releases printed at one time—\$.4058 per thousand four-page standards over contract.

Canton, Ohio, Repository—8-page standard sections printed bookfold, two releases at one time—\$30.00 per release over contract.

Charleston, W. Virginia, Gazette—10-page standard sections, printed two releases at one time—\$.4058 per M four-page standards over contract.

Charleston, S.C., News & Courier—8-page standard sections printed bookfold, two releases at one time—\$30.00 per release over contract.

Charleston, S.C., News & Courier—12-page standard sections—contract plus \$40.00 per release.

Charlotte, N.C., Observer—\$.1104 per thousand four-page standards under contract.

Colorado Springs, Colorado, Free Press—8-page standard size section—\$5.00 per release over contract.

Greenville, Tenn., Daily Sun—4-page standard size section—\$5.00 per release over contract.

Greenville, S.C., News—12-page standard—\$25.00 per release over contract.

Hereford, Texas, Brand—8-page standard size section—\$5.00 per release over contract.

Houston, Texas, Post—12-page standard—\$.2564 per thousand 12-page standards under contract.

Houston, Texas, Post—16-page standard—\$.7352 per thousand sixteen-page standards under contract.

Huntington, W. Va., Herald Advertiser—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

3066 Garden City, New York, Newsday—8-page tabloid sections—\$.10 per thousand four-page standards under contract.

Grand Rapids, Michigan, Herald—\$.10 per thousand four-page standards under contract.

Ironton, Ohio, Tribune—8-page standard sections—\$37.00 per release over contract.

Jamaica, New York, Long Island Press—12-page standards—On the first 200,000 circulation contract rate will apply. On circulation over the first 200,000 twelve-page standards, the rate will be \$1.2717 per thousand 12-page standards under contract.

La Cruces, N. Mexico, Sun News—8-page tabloid—\$5.00 per release over contract.

Lake Charles, La., American Press—8-page standard sections—\$15.00 per release over contract.

Lakeland, Florida, Ledger—8-page standard size sections—\$7.50 per release over contract.

Lexington, Kentucky, Herald Leader—12-page standards—\$31.61 per thousand four-page standards over contract.

Little Rock, Arkansas, Gazette—10-page standards, two releases printed at once—\$.3561 per thousand four-page standards over contract.

Macon, Georgia, Telegraph News—12-page standard sections—\$30.00 per release over contract.

McKeesport, Pa., D. News—8-page tabloid size sections—\$35.00 per release over contract.

Miami, Florida, Herald—16-page standard size sections—\$.05 per thousand four-page standards under contract.

Monroe, La., Star—8-page standard size sections—\$25.00 per release over contract.

Montgomery, Alabama, Advertiser—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

3067 Montgomery, Alabama, Advertiser—10-page standards, one release. Contract plus \$300 per printing.

Montgomery, Alabama, Advertiser—12-page standards. Contract plus \$25.00 per printing.

Morehead City, N.C., News Times—8-page tabloid sections—\$5.00 per release over contract.

Mt. Pleasant, Texas, Times—8-page tabloid—\$5.00 per release over contract.

New Albany, Indiana, Ledger & Tribune—8-page tabloid sections—\$5.00 per release over contract.

Newark, New Jersey, Star Ledger—12-page standards—\$.2839 per thousand four-page standards under contract.

New Bedford, Mass., Standard Times—10-page standards, two releases printed at once—\$.4058 per thousand four-page standards over contract.

New Bedford, Mass., Standard Times—8-page standards—\$.20 per thousand 8-page standards under contract.

Orangeburg, S.C., Democrat—8-page standard sections—\$10.00 per release over contract.

Orlando, Florida, Star—12-page standard sections—\$45.00 per release over contract.

Paducah, Kentucky, Sun Democrat—8-page tabloid sections—\$5.00 per release over contract.

Pensacola, Florida, Journal—8-page standard sections—\$7.00 per release over contract.

Philadelphia, Pa., Mayfair Times—8-page standard sections—\$2.50 per release over contract.

Pittsburgh, Pennsylvania, Sun Telegraph—Using 58½" newsprint rolls—\$.1258 per thousand four-page standards under contract.

Pittsburgh, Pa., Sun Telegraph—Special Makeready charge of \$190 per release over contract.

3068 Raleigh, N.C., News & Observer—10-page standard sections, two releases printed at once—\$.1461 per thousand four-page standards over contract.

Raleigh, N.C., News & Observer—10-page standards, for printing one release—\$.3961 per thousand four-page standards over contract.

Reading, Pa., Eagle—Tabloid magazine section printed on special premium newsprint—\$1.67 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—Newsprint adjustment charge—\$.025 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—14-page standards, for printing one release—\$.8261 per thousand four-page standards over contract.

Richmond, Va., Times Dispatch—14-page standard sections, two releases printed at once—\$.3725 per thousand four-page standards over contract.

Roanoke, Va., Times—10-page standard size sections—\$.4058 per thousand four-page standards over contract.

Rockford, Illinois, Star—10-page standards, two releases printed at once—\$.60 per thousand four-page standards over contract.

San Antonio, Texas, Light—20-page tabloid sections—\$.4058 per thousand four-page standards over contract plus an additional \$75.00 per printing.

San Antonio, Texas, Light—12-page tabloid sections—Contract plus \$75.00 per printing.

Shreveport, La., Times—\$.05 per thousand four-page standards under contract.

Silver City, New Mexico, Press—8-page tabloid sections—\$.50 per release over contract.

Tacoma, Washington, News Tribune—12-page standard sections—Contract plus \$50.00 per release.

Texas Quality Group—\$20.00 per release over contract.

Tulsa, Oklahoma, World—16-page standard size sections—\$.15 per thousand four-page standards under contract.

3069 Tupelo, Miss., Journal—8-page standards—\$10.00 per release over contract.

Washington, D.C., Post Times-Herald—Using 57½" newsprint rolls—\$.3242 per thousand four-page standards under contract.

Wichita Falls, Texas, Times—8-page standard sections—\$.24.00 per release over contract.

Wilmington, N.C., Star News—8-page standard sections—\$.25.00 per release over contract.

Wichita, Kansas, Beacon—\$.155 per thousand sections under contract.

Havana, Cuba, Informacion—\$20.00 per release over contract.

Caracas, Venezuela, La Esfera—\$25.00 per release over contract.

Panama, Panama, American—\$15.00 per release over contract.

Hamilton, Bermuda, Mid Ocean News—\$20.00 per release over contract.

Caracas, Venezuela, El Nacional—Sunday and Thursday Issues—\$16.50 per release over contract.

Caracas, Venezuela, El Nacional—Thursday Issue—\$.25 per thousand four-page standards over contract.

3070 Additional charge of \$5.00 will be made for each color ad printed and \$2.50 for each black and white ad, except, there will be no charge for ad printings on the following runs other than as indicated:

Akron, Ohio, Beacon Journal
 Ashland, Ky., Independent
 Augusta, Ga., Chronicle
 Austin, Texas, American S.
 Binghamton, N.Y., Press
 Birmingham, Ala., News
 Canton, Ohio, Repository
 Cedar Rapids, Iowa, Gazette
 Charlotte, N.C., Observer
 Columbia, S.C., State
 Columbus, Ga., Ledger Enquirer
 Dayton, Ohio, News
 Fairmont, W. Va., Times
 Fort Wayne, Ind., News Sentinel
 Grand Forks, N.D., Herald
 Grand Rapids, Mich., Herald
 Greenville, S.C., News
 Harrisburg, Pa., Patriot News
 Hutchinson, Kansas, News Herald
 Houston, Texas, Post
 Jamaica, L.I. Press
 Joplin, Mo., Globe
 Jackson, Miss., Clarion Ledger
 Lewiston, Idaho, Tribune
 Lexington, Ky., Herald Leader
 Little Rock, Ark., Gazette

Lynchburg, Va., News
 Macon, Ga., Telegraph News
 Madison, Wisconsin, State Journal
 Marion, Ind., Chronicle
 Miami, Fla., Herald
 Montgomery, Ala., Advertiser
 New Orleans, La., Item
 Natchez, Miss., Democrat
 Newark, N.J., Ledger
 New Bedford, Mass., Standard Times
 Pittsburgh, Pa., Sun Telegraph
 Parkersburg, W. Va., News
 Port Arthur, Texas, News
 Raleigh, N.C., News & Observer
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times
 St. Petersburg, Fla., Times
 San Antonio, Texas, Light
 St. Joseph, Mo., News Press
 Scranton, Pa., Scrantonian
 Springfield, Ohio, News Sun
 Tacoma, Washington, News
 Terre Haute, Ind., Tribune
 Topeka, Kansas, Daily Capital
 Tulsa, Okla., World
 Washington, D.C., Post Times-Herald
 Wheeling, W. Va., News Register
 Wichita Falls, Texas, Times
 Wichita, Kansas, Beacon
 Wichita, Kansas, Eagle
 Winston Salem, N.C., Journal & Sentinel
 Waco, Texas, Tribune Herald

Only One Charge for Each Ad:

Orange, Texas, Leader
 Texas City, Texas, Sun
 Tyler, Texas, Telegraph Courier

Texas Group: Charge only on ads which run on a circulation total of less than 80,000.

General Group: Only one charge for each ad, as follows:

Bristol, Va., Herald Courier
 Clearwater, Fla., Sun

Gadsden, Ala., Times
Martinsville, Va., Bulletin
Spartanburg, S.C., Herald Journal
Tuscaloosa, Ala., News

3071 [P-24 for ident., P-24 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

SALESMEN'S BULLETIN No. 14243

AUGUST 23, 1955.

To All Salesmen.

Re: KFS—ICP—Greater Buffalo Press.

Greater Buffalo Press recently purchased International Color
Printing Company.

This is a very constructive step and one which we initiated
and encouraged.

International Color Printing Company's personnel will un-
doubtedly continue as in the past with Mr. Gorman in charge
and KFS will continue to function as the exclusive sales agent
for International Color Printing Company under a new long
term contract.

Best regards.

Sincerely yours,

F. J. NICHT.

FJN:mec

3072 [P-25 for ident., P-25 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

CONFIDENTIAL

AUGUST 17, 1955.

Mr. J. W. Koessler,
President, The Greater Buffalo Press, Inc.
302 Grote Street, Buffalo 7, New York.

DEAR WALTER: I'm sure you must have realized that with
the consummation of our different negotiations our contract
would very likely become of more and more frequent occurrence
and that's just the way it seems to be working out. Almost
every day situations and problems arise. Of course, I will try
not to bother you with any in which you are not directly
concerned.

Let me itemize some of the things that are in mind at present
and this will give you a rough idea.

I wrote you yesterday about St. Augustine, Florida and Wenatchee World.

Now we understand that Fargo, N.D., Forum has given NEA cancellation notice and the contract will expire in about a year's time. I believe you print a 10-page standard size section for them.

Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye-to-eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process.

Take Fargo, for instance. Why shouldn't we make them a proposition based on your printing?

I had what I think is another worthwhile talk regarding Eastern and as things look now, maybe I'll be able to work things out. It may involve Portland, Maine and New Bedford and in the process we might get Greensboro.

I'm not sure, but I'm hopeful. In this connection, what are your thoughts about the Boston Post? If all of this can be worked out, our friends would be able to obtain increases on their present work which they are sorely in need of.

I would appreciate it if you could give me a list of the newspapers for which you are doing printing, not only in the States, but also Canada. We have what is undoubtedly a list of your clients, but I'd feel better if I had an authentic one from you. This will be useful to us in our sales contacts.

I received a rather disturbing reaction to that little piece that appeared in Editor & Publisher. I'll tell you about it when I see you. It disturbed this very important client because KFS was not mentioned and consequently he thought he had better get other propositions, I think I've straightened that out.

Will you please bring me up to date and specifically on the Houston Post by giving me the final price to us and transportation based on Lufkin printing. Recently you told me you figured Lufkin and Sylacauga would be underway in a year but would I be perfectly safe in saying that these plants will be in operation no later than November, 1956?

Don't you think it would be a good idea to have Jimmy Burns spend some time in Buffalo? I want to come up myself and will, but right now I don't know just when that would be.

All of this gives you a rough idea, doesn't it?
Best regards.

Sincerely yours,

F. J. NICH.

FJN:mec

3074 [P-26 For Ident., P-26 in Evid., H. T. Noel, Official
Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEDford 6410.

Buffalo 7, N.Y.,

August 22, 1955.

Mr. F. J. NICH,
King Features Syndicate,
235 E. 45th St.,
New York City.

DEAR FRANK: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere with his present operation.

I gather he is having trouble at St. Louis too. St. Louis realizing that there is no percentage in printing at the prices they are now charging N.E.A.

I think something will come of this in the next few weeks and abeyance from that source will be removed.

On the Eastern matter your proposed plan is O.K. with me if it is agreeable with Joe Gorman.

I do not think Eastern can touch our production cost on the Boston Post. In the next couple of months we will have our fine plate wide press operating and will be able to print a ten page section on EIGHT CYLINDERS using one roll.

Eastern with their equipment would have to use 20 CYLINDERS and use three rolls. If however the Boston Post continues to present a financial problem Eastern is welcome to it.

I will send you a list of our newspaper clients.

The cost of the Houston Post at Lufkin would be \$5.15 for a four page section on the basis of a 200,000 run. The transportation would be approximately 50¢ per hundred pounds.

The Post I understand has trucks going into Lufkin by which they would have their own sections.

I would be glad to have Jimmy Burns spend some time in Buffalo and acquaint himself with our operation.

Kindest regards,

J. W. Koessler, Br.

J. W. KOESSLER, *President.*

Extract "A" made for Houston Post follow-up. — 8/29/55
JWK: Br

3075 [P-27 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

OCTOBER 20, 1955.

THE GREATER BUFFALO PRESS, INC.,
302 Grote Street
Buffalo, New York

GENTLEMEN: This letter sets forth the agreement we have made with you with respect to our plant in Buffalo, New York, and the supplement printing now being done in that plant.

1. (a) We agree to sell to you and you agree to buy from us all the machinery, equipment, spare parts, supplies, furniture, fixtures and other tangible personal property (with the exception of one mat registering machine) located in our plant at 52-54 Carroll Street, Buffalo, New York (which we will call "our Buffalo plant") on the closing date specified in this agreement. We also agree to sell to you and you agree to buy from us all the newsprint paper and ink we have in storage at the Grant Terminal Warehouse, foot of Commercial Street, Buffalo, New York, on the closing date.

1. (b) For the above, you agree to pay us the sum of Twenty-Five Thousand Dollars (\$25,000.00) in cash, plus an amount equal to our cost on all newsprint paper in rolls, ink in drums, metal and supplies in our Buffalo plant and in storage for us at the Grant Terminal Warehouse, Buffalo, New York, on the closing date. The "closing date" under this agreement shall be January 14, 1956, or such other date as you and we may mutually agree upon. You shall take possession of our Buffalo plant on the closing date, and, on that date, pay us the sum of Twenty-Five Thousand Dollars (\$25,000.00). The amount remaining to be paid to us under Paragraphs 1 (a) and 1 (b) of this agreement shall be determined promptly after the closing date and paid to us when it is determined.

2. You agree to pay us the sum of *Three Hundred and Fifty Dollars* (\$350.00) per month from the closing date until our present lease on our Buffalo plant expires on July 1, 1956. You also agree to pay us the sum of *Six Hundred Twenty-five Dollars* (\$625.00) per month from the closing date until our present lease on storage space in the Grant Terminal Warehouse expires on June 1, 1956 or until we are able to effect an earlier termination of that lease.

3. We agree to turn over to you on the closing date all our supplement printing for the following named customers: NEA Service, Inc. of Cleveland, Ohio, a named customer which also places orders for the named customers shown in Appendix B; United Feature Syndicate, Inc. of New York, a named customer which also places orders for the named customers shown in Appendix C; United Press Associations of New York, New York, a named customer which also places orders for the named customers shown in Appendix D; The Chicago Daily News of Chicago, Illinois; the Columbus Citizen of Columbus, Ohio; The Indianapolis Times of Indianapolis, Indiana; The Knoxville News-Sentinel of Knoxville, Tennessee; The Evansville Courier-Press of Evansville, Indiana; and their respective successors and assigns (all of which we will call the "named customers").

4. You agree to do supplement printing on order from any or all of the named customers at your established schedule of rates (subject to the exceptions in special cases as set out in Appendix A hereto).

3077 4. (a) Your established schedule of rates is based upon a standard size eight-page supplement produced at your plant in either Buffalo or Dunkirk, New York, for which your present charges are: a \$216.00 plate and make ready charge for each eight-page standard supplement and a \$9.49 charge for printing each thousand copies of the eight-page standard supplement. The combination of these two charges gives the present total price for producing an eight-page standard supplement, F.O.B. printing plant.

4. (b) If supplements having more or less than eight standard size pages are produced, the price as specified above shall be adjusted in proportion to the increase or decrease in the number of pages.

4. (c) If tabloid supplements are produced, two tabloid sized pages shall be deemed the equivalent of one standard

sized page and the price as specified above shall be adjusted accordingly.

4. (d) The price specified above is based upon thirty-two pound basis newsprint of twenty-nine inch roll with at a price of \$125.50 (initialed by KLK and LEH) per ton, F.O.B. Buffalo, New York. If the price of newsprint increases or decreases, the price specified above for producing one thousand supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the newsprint necessary to print such one thousand supplements. Should paper other than thirty-two pound basis or twenty-nine inch roll width be used for printing supplements hereunder, the price per thousand such supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the paper necessary to print one thousand such supplements.

3078 4. (e) If you increase or decrease any of your rates for work similar to that covered by this agreement on account of an increase or decrease in costs other than for newsprint paper, such increase or decrease in rate shall apply to work thereafter done under this agreement to the extent, but only to the extent, that it applies to similar work done by you for customers not covered by this agreement. In brief, it is the understanding between us that you will do work for the customers named in this agreement at a price at least as low as that for which you do similar work for other customers.

4. (f) On ready print runs for more than one newspaper, changes shall be charged for at the rate of \$2.00 for each heading change and \$10.00 for each page change. Without your consent, page changes shall not exceed three for any one supplement.

5. Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular newspaper for which the work is done, unless work is being done for a newspaper which receives a supplement which is part of a ready print run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular ready print run. Printing may be done now at either your plant in Buffalo, New York or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas and Sylacauga, Alabama and any other plants which you may con-

struct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants.

3079 6. In consideration of the supplement printing turned over to you under this agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows:

(a) For each 1,000 copies of any standard page size supplement produced by you for any of the named customers, you shall pay us the sum of \$.0625 multiplied by the number of pages in the supplement.

(b) For each 1,000 copies of any tabloid page size supplement produced by you for any of the named customers, you shall pay us \$.03125, multiplied by the number of pages in the supplement.

(c) You agree that each month (initialed by KLK and LEH) you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered under this agreement during the next preceding month. With each such statement you agree to pay us or our nominee the amount to which we are entitled under this agreement on account of work delivered by you during the next preceding week.

7. We procure our newsprint paper from The Scripps-Howard Supply Company and have been assured by that company that we can turn over to you at mill price 250 tons per month of newsprint in roll size of thirty inch or less during the year 1956 and 1957.

3080 8. This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America.

9. This agreement shall bind and benefit us and our successors and assigns. It shall bind and benefit you and your successors and assigns and affiliated and subsidiary companies and any company with which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or in which either of them has a stock interest.

If the foregoing is satisfactory to you and correctly expresses your understanding of our agreement, will you please sign the enclosed copy of this letter and have that copy also signed by Mr. J. W. Koessler and Mr. Kenneth Koessler. If you will then return the signed copy to us, it will make a binding agreement between us.

Sincerely yours,

BUFFALO COLORPRESS, INC.

By /s/ L. E. HERMAN,

President.

/s/ HERBERT WALKER,

Vice-President.

The agreement set forth above is hereby accepted and agreed to this 22nd day of October, 1955.

THE GREATER BUFFALO PRESS, INC.,

By /s/ J. W. Koessler

/s/ J. W. Koessler

J. W. KOESSLER

/s/ Kenneth L. Koessler

KENNETH KOESSLER

APPENDIX A

The printing rates listed below will apply to some runs now in Buffalo Colorpress and are exceptions to the pricing schedule set forth in Paragraph 4(a)(b)(c) of the general agreement:

United Feature and United Press readyprint run, an eight-page tabloid section—

Five dollars and eighty-seven cents (\$5.87) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

NEA readyprint run, an eight-page tabloid section—

Five dollars and twenty-five cents (\$5.25) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

Poughkeepsie, Council Bluffs, Fort Worth run, a sixteen-page tabloid section—

Ten dollars and fifty-eight cents (\$10.58) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

NEA readyprint run, an eight-page standard section—

Eleven dollars and sixteen cents (\$11.16) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change.

Ponca City run, an eight-page tabloid section—

Nine dollars and fifty cents (\$9.50) per thousand, f.o.b. Buffalo, N.Y.

Trenton run, an eight-page standard section—

Eleven dollars and seventy-seven cents (\$11.77) per thousand, f.o.b. Buffalo, N.Y.

The charge to NEA for adding additional newspapers to these runs will be:

Eight-page tabloid runs—

Four Dollars and seventy-five cents (\$4.75) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change. Page changes are not to exceed three, except by mutual agreement, in any one section.

3082 *Eight-page standard runs and sixteen-page tabloid runs—*

Nine dollars and forty-nine cents (\$9.49) per thousand, f.o.b. Buffalo, N.Y., plus Two dollars (\$2.00) for each heading change (black only) and Ten dollars (\$10.00) for each page change. Page changes are not to exceed three, except by mutual agreement, in any one section added to the present runs.

The payments to Buffalo Colorpress or its nominee as specified in Paragraph 4 of the agreement apply on the above runs.

3083

APPENDIX B

*Orders for the named customers below are placed by
NEA Service, Inc.*

Aurora (Ill.) Beacon News
Broken Bow (Neb.) Custer Co. Chief

Cheyenne (Wyo.) State Tribune
 Chillicothe (Ohio) Gazette
 Corbin (Ky.) Times
 Corinth (Miss.) Corinthian
 De Land (Fla.) Sun News
 Elizabethton (Tenn.) Star
 Elyria (Ohio) Chronicle Telegram
 Fort Pierce (Fla.) News Tribune
 Frankfort (Ky.) State Journal
 Gainesville (Fla.) Daily Times
 Griffin (Ga.) Daily News
 Harlan (Ky.) Enterprise
 Huntington (Ind.) Herald Press
 Joliet (Ill.) Herald News
 Kankakee (Ill.) Sunday Journal
 Kokomo (Ind.) Tribune
 Leesburg (Fla.) Commercial Ledger
 Lewiston (Mont.) News
 Laramie (Wyo.) Daily Bulletin
 McCook (Neb.) Gazette
 Melbourne (Fla.) Sunday Times
 Miles City (Mont.) Star
 Moundsville (W. Va.) Echo
 Norman (Okla.) Transcript
 Ocala (Fla.) Star Banner
 Pulaski (W. Va.) S.W. Times
 Rawlins (Wyo.) Daily Times
 Rock Springs (Wyo.) Miner
 Rome (Ga.) News Tribune
 Selma (Ala.) Times Journal
 Shelby (Ohio) Globe
 Spencer (Ia.) Times
 Suffolk (Va.) News Herald
 Sylvania (Ohio) Sentinel Herald
 Valdosta (Ga.) Times
 Worland (Wyo.) News
 Atlantic City (N.J.) Press
 Borger (Texas) News Herald
 Council Bluffs (Ia.) Nonpareil

Dothan (Ala.) Eagle
 Florence (Ala.) Tri Cities Daily
 Fort Lauderdale (Fla.) News
 Fort Myers (Fla.) News Press
 Fort Worth (Texas) Press
 Hammond (Ind.) Times
 Huron (S.D.) Plainsman
 Panama City (Fla.) News Herald
 Pensacola (Fla.) News Journal
 Ponca City (Okla.) News
 Poughkeepsie (N.Y.) New Yorker
 Sarasota (Fla.) Herald Tribune
 Trenton (N.J.) Times
 Zanesville (Ohio) Times Signal

3084

 APPENDIX C

*Orders for the named customers below are placed by
 United Feature Syndicate, Inc.*

Ada (Okla.) Evening News
 Artesia (N.M.) Daily Press
 Carlsbad (N.M.) Current Argus
 Durango (Col.) Herald News
 Farmington (N.M.) Times
 Gallup (N.M.) Independent
 Henry County Journal, Bassett, Va.
 Kinston (N.C.) Free Press
 Oregon City (Ore.) Banner Courier
 Pascagoula (Miss.) Chronicle Star
 Paterson (N.J.) Sunday Eagle
 Statesville (N.C.) Daily Record
 Poughkeepsie (N.Y.) New Yorker

3085 [P-28 for ident., P-28 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NEA SERVICE, INC.,
1200 West Third St.,
Cleveland 13, Ohio,
October 20, 1955.

THE GREATER BUFFALO PRESS, INC.,
302 Grote Street,
Buffalo, New York

GENTLEMEN: This letter sets forth the agreement we have made with you with respect to new customers for supplement printing which we may hereafter secure for you.

1. You agree to do supplement printing on orders we secure for you either from or for the account of customers who are not now on your books. When any such order is secured by us and delivered to you, the customer and the successors and assigns of the customer from, or on whose account, the order was secured shall thereafter be known as and is hereinafter called "a new customer." You agree to keep a list of the new customers we secure for you and to confirm to us when each new customer is added to that list.

2. You agree that you will do supplement printing for the new customers at your established schedule of rates (subject to the exceptions, if any, in special cases as set out in Appendix A hereto).

2(a). Your established schedule of rates is based upon a standard size eight-page supplement produced at your plant in either Buffalo or Dunkirk, New York, for which your present charges are: a \$216.00 plate and makeready charge for each eight-page standard supplement and a \$9.49 charge for printing each thousand copies of the eight-page standard supplement. The combination of these two charges gives the present total price for producing an eight-page standard supplement, F.O.B. printing plant.

3086 2. (b) If supplements having more or less than eight standard size pages are produced, the price as specified above shall be adjusted in proportion to the increase or decrease in the number of pages.

2(c). If tabloid supplements are produced, two tabloid sized pages shall be deemed the equivalent of one standard sized

page and the price as specified above shall be adjusted accordingly.

2. (d) The price specified above is based upon thirty-two pound basis newsprint of twenty-nine inch roll width at a price of \$125.50 per ton, F.O.B. Buffalo, New York. If the price of newsprint increases or decreases, the price specified above for producing one thousand supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the newsprint necessary to print such one thousand supplements. Should paper other than thirty-two pound basis or twenty-nine inch roll width be used for printing supplements hereunder, the price per thousand such supplements shall be adjusted by the exact amount of the increase or decrease in the cost of the paper necessary to print one thousand such supplements.

2(e). If you increase or decrease any of your rates for work similar to that covered by this agreement on account of an increase or decrease in costs other than for newsprint paper, such increase or decrease in rate shall apply to work thereafter done under this agreement to the extent, but only to the extent, that it applies to similar work done by you for customers not covered by this agreement. In brief, it is the understanding between us that you will do work for the new customers at a price at least as low as that for which you do similar work for other customers.

3087 2(f). On ready print runs for more than one newspaper, changes shall be charged for at the rate of \$2.00 for each heading change and \$10.00 for each page change. Without your consent, page changes shall not exceed three for any one supplement.

3. Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular new customer for which the work is done, unless work is being done for a new customer which receives a supplement which is part of a ready print run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular ready print run. Printing may be done now at either your plant in Buffalo, New York or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas and Sylacauga, Alabama and any other plants which you may

construct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants.

4. In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree that you will pay us or our nominee an amount to be determined as follows:

(a) For each 1,000 copies of any standard page size supplement produced by you for any new customer, you shall pay us the sum of \$.0625 multiplied by the number of pages in the supplement.

3088 (b) For each 1,000 copies of any tabloid page size supplement produced by you for any new customer, you shall pay us \$.03125, multiplied by the number of pages in the supplement.

(c) You agree that each month you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered to new customers during the next preceding month. With each such statement, you agree to pay us or our nominee the amount to which we are entitled under this agreement on account of work delivered by you during the next preceding week.

5. This agreement shall take effect on January 16, 1956, or such later date as you and we may mutually agree upon and continue in effect for ten years and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America.

6. This agreement shall bind and benefit us and our successors and assigns. It shall bind and benefit you and your successors and assigns and affiliated and subsidiary companies and any company with which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or in which either of them has a stock interest.

3089 If the foregoing is satisfactory to you and correctly expresses your understanding of our agreement, will you please sign the enclosed copy of this letter and have that copy also signed by Mr. J. W. Koessler and Mr. Kenneth Koessler.

If you will then return the signed copy to us, it will make a binding agreement between us.

Sincerely yours,

NEA SERVICE, INC.
By FRED R. FERGUSON,
President.
HERBERT W. WALKER,
Vice-President.

The agreement set forth above is hereby accepted and agreed to this 22nd day of October, 1955.

THE GREATER BUFFALO PRESS, INC.
By J. W. KOESSLER
J. W. Koessler
J. W. KOESSLER
Kenneth Koessler
KENNETH KOESSLER

3090 [P-40 for ident., P-40 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.,
January 26, 1956.

MR. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.
New York 17, N.Y.

DEAR FRANK: I don't think we can reasonably deny N.E.A. the privilege of doing business with their blood relatives.

The Greater Buffalo Press as the Greater Buffalo Press has been working in Memphis for the past five or six years and I know that if any change is made it will be kept in the family.

If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it.

The alternative would be for N.E.A. to take the job to St. Louis which is too close for comfort.

It is these complications which make it so difficult to spell out a hard and fast formula.

It can be worked out however under the idea on which we are cooperating namely—each of us to hold what we have and to share with King any new business which is obtainable.

Kindest regards,

J. W. Koessler

J. W. KOESSLER,
President.

JWK:bv

copy attached to Memphis Commercial Appeal readyprint fu.
mec

3091 [P-52 for ident., H. T. Noel, Official Reporter, U.S.
District Court.]

Memo to: JOHN BOOTH

cc: Gerry, Tom, Vince, Bessie, Joe, Clinton, 3 ex.

On April 22nd I wrote a memo as follows, "As you now probably know the Southern plant situation has reached a climax with the decision of Greater Buffalo to put an operation in Texas. Vince, please tell about my conversation with Bloom and Nicht. Tom, tell what you heard about Texas."

Presume that Vince and Tom have both passed the information along.

"We may be hurt in one way and helped in another. We can't tell right now. I do know that it may be necessary for us to consolidate or move one plant to eliminate a lot of overhead. What we should do I don't know without considerable figuring. On next page are problems which must be answered:

1. Would it pay to eliminate Peoria and print everything in Wilkes Barre?

2. Would it profit us to leave Peoria and consolidate Wilkes Barre?

3. Would it pay to leave Wilkes Barre as is and move Peoria elsewhere?

4. Or would it be worthwhile to leave Peoria as is and move Parsons elsewhere?

Since we're undoubtedly going to lose considerable business on account of developments in Texas, one or maybe two of the

above moves may be necessary to reduce overhead to a minimum."

I believe that while I was in the South I wrote another memorandum along this same line but I am wondering if anyone else has started to do any figuring on any of the above propositions.

JOSEPH J. GORMAN.

NJR

NOTE: 11/15/54

WE MUST GET A COMPARISON OF TRANSPORTATION COSTS IMMEDIATELY. ——— J. J. G.

3092 [P-53 for ident. P-53 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

BIRMINGHAM, ALABAMA,

May 26, 1954.

REPORT ON POSSIBILITIES OF COLOR PRINTING
PLANT IN OR NEAR BIRMINGHAM

I learned recently that the Coosa River Newsprint Company was planning expansion, so on my visit to Birmingham News I decided to go see the mill. I took a U-Drive-It car out there yesterday afternoon.

The Coosa River Newsprint Company was organized just prior to 1950. The stock amounts to about \$18,000,000.00 of which \$11,000,000.00 is owned by approximately 125 newspapers throughout the South, as well as several in the North, including the Kansas City Star. The balance, or about \$7,000,000.00 is owned by Kimberly-Clarke and I believe that this company has a long term management contract.

The mill is located at Coosa Pines, near Childersburg, about 40 miles outside of Birmingham. There is no population in Coosa Pines, and Childersburg is a comparatively small town. The president and general manager of the mill is Mr. Wakeman, formerly with Kimberly-Clarke and Spruce Falls. The sales manager, a Mr. Walph [sic] Watt, was also a Kimberly-Clarke man. He is a former president of Montclair and an old friend of Bob Sternberger.

For a long time we have been considering the possibility of a Southern printing plant, realizing that there would be considerable transportation saving for the southern newspapers which we now serve. On the other hand, the transportation saving may not be sufficient to offset the increase in overhead,—particularly in stereotyping.

We have made numerous studies to determine the saving in transportation, and also the cost of operating a plant, and we are now at the beginning of new studies along these lines. Up to this point we were faced with the necessity of paying a higher newsprint cost if the plant were to be located anywhere but on the coast. I believe the coast price per ton runs about \$127.00—the same as we are now paying in Pennsylvania. The interior price is \$131.00.

When the Coosa River Newsprint Company was established it was agreed that stockholder publishers could obtain newsprint in direct ratio to the amount of their stock holdings. Even now most of them are paying a very high price to the Canadian Mills because of long term contracts and cannot buy from Coosa River until the long term contracts have expired.

What is Coosa River going to do with the new capacity? It so happens that I dropped into the mill yesterday afternoon immediately following the annual stockholders' meeting. At this meeting it was decided that a \$3,000,000.00 expansion should be put into effect, giving an increase in capacity of from 30,000 to 40,000 tons by the end of a two year period. This is not to be done by means of new machinery but rather by improving present equipment. The Lufkin expansion of 70,000 tons is to be accomplished by the installation of new machinery, at a cost of \$15,000,000.00.

Some one told me two weeks ago that there might be a hitch in the arrangement between Greater Buffalo Press and Lufkin. Today, I heard more along this line. I was told by Mr. Watt that when the directors of Lufkin approved the expenditure of \$15,000,000.00, it was provided the mill would be able to 3093 sell the additional 70,000 tons. Mr. Watt tells me that so far they have not sold more than 28,000 tons, of which 15,000 tons were supposed to be used by Greater Buffalo. 15,000 tons represents about ten million four-page sections. Watt told me that so far Greater Buffalo has not been able to account for more than 5,000 tons, which would be something in the neighborhood of three million four-page sections.

He said Lufkin is rather badly in need of improved water supply, and while he has no way of knowing for certain, he thinks there is a possibility of a hitch.

Getting back to Coosa River. When I walked in yesterday afternoon, Mr. Wakeman and Mr. Watt looked rather surprised—especially in view of the fact that only a few hours earlier they had been talking about getting in touch with me. They are very definitely interested in having a color printing plant on their property. They purchased the ground from the Government, which has a large Ordnance Plant nearby. They would like to erect a building, and rent it to a color printing plant on a long term basis. I know that at yesterday's meeting they used the Birmingham News as an example of what could be saved in the way of transportation. As you probably know, Mr. Hanson is President of the Coosa River Paper Company, as well as publisher of the Birmingham News.

The present delivered price of paper from Coosa River to any plant in the South is \$125.50 as against \$127.00 which we are now paying. Mr. Hanson pays the same as Roy Roberts up in Kansas City. However, if a color printing company were located at Coosa Pines, the newsprint would be sold f.o.b. mill, for probably about \$120.00. As I said before, the cost along the coast is \$127.00.

I talked at length to Mr. Wakeman and Mr. Watt yesterday afternoon, and then arranged to meet the latter this morning. I told him that International Color is an independent organization but does practically all of King Features' work. I suggested a meeting between him and a representative of King Features, which he thought would be a good idea. Therefore, I am going to arrange a meeting between him and Mr. Nicht the week of June 21st.

The Board of Directors of Coosa River Newsprint Company will meet again in August, and Mr. Watt hopes at that time to be able to report progress on arrangement with some color printing company. He is going to see Walter Koessler the last week in June,—also Jim Darcey, of Eastern Color. He has had a long time contact with Darcey through the sale of Spruce Falls Paper.

When I gave him some idea of the names of King's customers he remarked that it is probable that we are selling at least seventy-five percent of the same customers as Coosa River, and

a view of the tonnage now used by International Color for southern newspapers, Coosa River would probably prefer to have an I.C.P. or a King plant on their property.

There are absolutely no pressmen or stereotypers in Coosa Pines, and I am not so sure that it would be easy to get the average pressman to live there.

After finishing with Mr. Watt today I talked to Clarence Hanson, and he is quite interested in the idea of King Printing in this neighborhood. He seemed to think that we would be able to pick up pressmen and stereotypers. Since Coosa Pines is only 30 miles from Birmingham, the chances are that Birmingham Union would control, so I asked Mr. Hanson to send me copies of his press and stereotype contracts.

When I leave here today I plan to go to the Bowater Mill, somewhere outside of Chattanooga. Between now and the time Mr. Watt comes to New York we will have to work up a cost schedule,—also a table showing transportation saving.

It may be that the owners of I.C.P. will not be interested in a southeastern proposition, but I am convinced that something will have to be done to guard our southern flank against encroachment by Lufkin.

JOSEPH J. GORMAN.

P-54 for ident., [P-54 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING COMPANY, INC.,

Wilkes-Barre, Pa.,

July 28, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Wednesday, July 28, 1954, at 6 P.M.

Present: Joseph J. Gorman, Ralph R. Govin and William S. McLean.

The President announced that he had several meetings with representatives of King Features and one meeting with officials of the Hearst organization and that they were insistent that this company establish a printing plant in the south, stating quite frankly they would be required to give their southern business to our competitors if we failed to do so.

The reports to stockholders regarding the Coosa Pines location were discussed and the President was authorized to advise the Coosa River Paper Co. that this company was interested in a contract for the purchase of newsprint and in having the paper company erect a building for the purpose of leasing it to this company so that this company can set up its presses and equipment and start a printing plant at that location.

The President was authorized to negotiate a long term contract with King Features which would assure this company of amortization of the cost of transporting and setting up its presses and other necessary equipment at the Coosa Pines location.

The President was also directed to determine the cost involved in the establishment of a southern plant and to negotiate a loan to defray such cost. All contracts and agreements in connection with the establishment of a southern plant, 3096 as well as the financing thereof to be subject to the approval of the Board before the final contracts or evidence of indebtedness are executed or issued.

There being no further business the meeting was adjourned.

_____,
Secretary.

3097

INTERNATIONAL COLOR PRINTING COMPANY, INC.,
Wilkes-Barre, Pa.,
October 4, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the offices of the Company, 268 George Ave., Parsons, Wilkes-Barre, Pa., on Monday, October 4, 1954, at 2 P.M.

Present: Joseph J. Gorman, John W. Booth and Wm. S. McLean.

The President announced that he had not been able to come to an agreement with King Features regarding a long term contract and the erection of a southern plant, but expected to have a meeting with representatives of King Features in New York on October 21, 1954, and he would like to have a meeting of the Board of Directors called to meet at the Hotel Biltmore in New York at 6 P.M. that evening for the purpose of consider-

ing the proposals of King Features. The Secretary was directed to send notices to the directors of said meeting.

The President reported on the earnings of the Company for the third quarter of 1954 and it was decided that a dividend should be declared.

On motion duly made and seconded the following resolution was passed:

RESOLVED that the sum of \$8700. be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% upon its outstanding stock for the third quarter of 1954, said dividend to be paid on the 14th day of October, 1954 to stockholders of record as shown by the books of the Company at the close of business on the 10th day of October, 1954.

RESOLVED further that the Treasurer of this Company be authorized and instructed to give notice of such dividend and to pay the

3098

INTERNATIONAL COLOR PRINTING COMPANY, INC.,
Wilkes-Barre, Pa.,
October 21, 1954.

A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Thursday, October 21, 1954, at 6 P.M.

Present: Joseph J. Gorman, May G. Scofield, Ralph R. Govin and William S. McLean.

The President announced that he had met with representatives of King Features for the better part of the day, immediately prior to the stockholders meeting, but there were certain details that could not be ironed out and that no contract has as yet been tentatively agreed upon. He informed the stockholders that there were certain additional lists of cost and transportation service that King Features desired before entering into final negotiations. The President was authorized to submit the schedule of costs requested by King Features.

The President expressed disappointment at having called this meeting, but stated that had he been able to reach an agreement with King Features there were certain things that would have to be acted upon immediately so that we could get started with the southern plant.

A general discussion was held regarding the desirability of the Coosa River area as a location for a southern plant, the transportation savings that would be effected by the location of a plant in that area. Attention was also called to the fact that the operation of a third plant would increase the overhead to the extent that the transportation savings would just about be eliminated.

There being no further business the meeting was adjourned.

_____,
Secretary.

3099 INTERNATIONAL COLOR PRINTING COMPANY,
WILKES-BARRE, PA.

December 28, 1954.

Minutes of special meeting of Board of Directors.

A meeting of the Board of Directors of International Color Printing Co. was held, pursuant to notice, at the office of the Secretary, 818 Miners National Bank Building, Wilkes-Barre, Pa., at 2 P.M. on Tuesday, December 28, 1954.

Those present were:

Joseph J. Gorman,
John W. Booth,
William S. McLean.

The President announced that the meeting was called for the purpose of declaring a dividend for the fourth quarter of 1954, stating the amount of the profits of the Company for the first eleven months of the year and advising that in his opinion the regular quarterly dividend could be paid.

On motion duly made and seconded, the following resolution was adopted:

RESOLVED that the sum of \$8700 be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% for the fourth quarter of 1954 upon its outstanding stock, said dividend to be payable on January 3, 1955, to stockholders of record on the books of the Company at the close of business on January 2, 1955.

The president called attention to the fact that his contract with the Company, dated November 15, 1949, provided for the payment of 10% of the annual operating profits of the Company, such profits to be computed before deductions and

charges for depreciation and before deductions for any
 3100 interest on notes payable to the Govins.

The President then stated that due to the fact the Company had during the current year paid the 1954 vacation pay due its employees and charged the same against the operating income for such year and had also set up a reserve for 1955 vacation pay of such employees and charged the same against the operating income for 1954, it resulted in a decrease in his salary to the extent of 10% of the amount of such reserve for the 1955 vacation pay charged against operating income for 1954.

The President also called attention to the fact that there would be a substantial deduction from operating income representing charges of costs of moving and setting up equipment in the contemplated southern plant and that such costs so charged to operating income would further substantially reduce his salary.

The President advised that he had discussed these matters with Mr. Govin and Mrs. Scofield, the beneficial owners of the stock of the corporation, both of whom are directors of the corporation but were unable to attend this meeting, and that both Mrs. Scofield and Mr. Govin had agreed that in determining the salary payable to the President under his contract the operating profit for such purpose, should be computed before deduction of the 1955 reserve for employees vacation pay during the year 1954 and should hereafter be computed before deductions for costs of moving and setting up equipment in the contemplated southern plant.

It was regularly moved and seconded that the following resolution be adopted:

RESOLVED, Whereas the agreement existing between the International Color Printing Company and
 3101 Joseph J. Gorman, dated the 15th day of November, 1949, provides, inter alia, for the payment to Mr. Gorman of additional salary in the amount of 10% of the annual operating profits and that such profits shall be computed before deductions and charges for depreciation and before deductions of interest or notes payable to the Govin family; and

WHEREAS, by resolution dated the 16th day of January, 1951, this Company agreed that such additional salary payable to Mr. Gorman shall be computed before deduction of taxes; and

WHEREAS the Company has, for the current year, set up a reserve for payment of 1955 vacation pay to its employees and deducted such reserve from its operating profits for the current year in addition to making payment of the vacation pay to its employees due for the year 1954; and

WHEREAS, this Company contemplates setting up a southern plant and the expenditure of the large sums of money in moving and setting up some of its equipment in such plant, part of such expenses to be charged to future operating profits;

NOW, THEREFORE, BE IT RESOLVED that the additional salary paid Joseph J. Gorman under his contract with this Company dated the 15th day of November, 1949, shall be computed on the operating profits before deduction and charges for depreciation, before deductions for any interest on notes payable to any members of the Govin family, before deduction of income taxes, before deduction for reserve set up in 1954 for the payment of employees vacation pay for the year 1955, and hereafter before deductions for charges against operating profits incurred by the reason of the moving or setting up any of the Company's equipment in its contemplated southern plant.

There being no further business the meeting was adjourned.

Secretary.

3102 [P-55 for ident., P-55 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

September 22, 1954.

AIR MAIL—SPECIAL DELIVERY

Mr. J. J. GORMAN, *President*,
International Color Printing Company,
268 George Avenue,
Wilkes Barre, Pennsylvania.

DEAR JOE: As requested in our telephone conversation this morning, I confirm my August 30 discussion with you and Mr. Nicht in New York as follows:

In the event you should decide to build a comic printing plant in the southeast, we would undertake to supply you with the newsprint requirements for such plant commencing in 1956, up to a maximum annual tonnage to be determined, with the understanding that your newsprint requirements of that plant would be purchased from us exclusively up to the maximum

amount of tonnage we agreed to supply. Our paper would be supplied at our regular contract price and terms, the arrangement to be covered by a long term contract either with Hearst Enterprises, Inc., or if with International Color Printing Company, to be guaranteed either by Hearst Enterprises, Inc., or King's Features.

We would enter into this arrangement with the understanding that you would be permitted to truck the newsprint from our plant should you so elect, in which case we would allow the published carload freight rate or trucking rate to destination, whichever was lower.

From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually.

This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama.

Coosa River Newsprint Co.—Continued

We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for disposal of the tonnage in the event you should decide not to go ahead.

I understand you are planning to be down this way for further discussions sometime next week. We will endeavor to be whatever help we can in connection with your studies.

Yours very truly,

COOSA RIVER NEWSPRINT COMPANY,

Vice-President.

RMW:nbm

[P-56 for ident., P-56 in evid., H. T. Noel, official Reporter, U.S. District Court]

3104 In consideration of the mutual covenants and agreements hereinafter set forth, COOSA RIVER NEWS-PRINT COMPANY, an Alabama corporation (hereinafter called the Seller), hereby agrees to sell and Hearst Enterprises, Inc., a New York corporation (hereinafter called the Purchaser), hereby agrees to purchase from the Seller of the output of its mill, white standard newsprint paper for use exclusively by International Color Printing Company in its printing

plant to be erected at or nearby Coosa Pines, Alabama (hereinafter called the destination), as follows:

1. QUANTITY.

The quantity covered by this contract shall be: for 1956, 2,500 tons; for 1957, 8,000 tons, and for the remaining term of the contract, 10,000 tons annually.

Should International Color Printing Company's requirements exceed the above quantities in any of the years designated, Seller shall have an option to furnish all or any part of the additional white standard newsprint paper needed, such option to be exercised within 30 days after receipt of notice. Purchaser shall notify Seller of the additional quantity of newsprint which will be required by International Color Printing Company at any time. The first such notification shall be made by October 1, 1955.

The newsprint referred to herein shall be ordered, shipped, and delivered in carload lots in approximately equal monthly installments, non-cumulative, during the term of this agreement.

2. TERM.

The initial term of this contract shall be the period beginning January 1, 1956, and ending December 31, 1965. If on or before September 1, 1964, the Seller shall give the Purchaser written notice of Seller's desire to extend the contract for a further term of ten years, then, unless Purchaser on or before October 1, 1964, shall notify Seller of his refusal to extend the term, the contract shall be extended for an additional period beginning January 1, 1966, and ending December 31, 1975.

3. SPECIFICATIONS.

(a) Basis weight of the paper shall be approximately 3 pounds to 500 sheets, 24 by 36 inches, without reference to International Color Printing Company's production basis. On any individual shipment, five percent (5%) over or under such basis weight shall constitute good delivery.

(b) Unless changed by mutual agreement, roll sizes shall be: width, . . . 58 . . . and . . . 29 . . . inches; diameter, . . . 40 . . . inches maximum.

(c) Purchaser, or International Color Printing Company, shall furnish Seller by the 15th of each month specifications stating the tons of each width and diameter to be supplied.

during the succeeding month. If Purchaser, or International Color Printing Company, shall fail to furnish specifications by such date, Seller may manufacture and ship in accordance with specifications last received.

4. PRICE AND BILLING.

(a) The Seller's contract market price for standard newsprint paper in effect from time to time shall be the price applicable to all shipments of paper hereunder, but such price at no time shall be more than \$4 per ton in excess of the generally accepted contract market price then in effect for standard newsprint paper manufactured in North America delivered in New York City.

(b) Such price shall apply per ton of 2,000 pounds f.o.b. Seller's mill and shall be subject to an allowance in lieu of freight equal to the full carload rate or trucking rate, whichever is lower, in effect at the time of shipment for standard newsprint paper shipped from Coosa Pines, Alabama, to destination, but such allowance shall not exceed the carload rate of freight or trucking rate, whichever is lower, in effect at the beginning of the contract term between such points.

(c) The paper shall be invoiced at the actual weight of rolls when packed for shipment, including wrappers but excluding cores.

(d) Cores will be invoiced at 2c per inch, and such charge will be credited to Purchaser upon return of cores to Seller's mill in good condition, freight prepaid.

3105 (e) Any and all taxes, duties, or other charges of any nature imposed by any United States, state or other government authority, which shall become payable by reason of the sale or delivery of merchandise hereunder, shall be deemed for the Purchaser's account, and the Seller may either invoice the same to the Purchaser separately or add the same to the price of merchandise shipped hereunder.

5. DELIVERY.

(a) All deliveries under this contract (except in case of billing to Seller's order) shall be made f.o.b. cars at Seller's mill, and title shall pass to Purchaser at time of such delivery.

(b) Shipments shall be routed by the Seller, at the risk of the Purchaser, but with due regard for Purchaser's preference where practicable.

6. TERMS OF PAYMENT.

Payment shall be due net cash on or before the fifteenth day of the month following shipment, in United States funds at Seller's office. Any amount unpaid on the due date shall bear interest at six percent (6%) per annum, computed from the due date until paid.

7. CLAIMS.

(a) No allowance shall be made by the Seller for waste or damage or for paper left on cores.

(b) The Seller shall not be liable for a claim of any nature unless written notice of such claim is given Seller within ten days after receipt of shipment. The Seller shall not be liable for indirect or consequential damage.

8. CONTINGENCIES.

It is agreed that if the Seller's production and/or deliveries of standard newsprint paper be hereafter prevented, impaired, reduced, or restricted by reason of force majeure, strikes, floods, fires, accidents, transportation contingencies, embargoes, or shortages of water, power, labor, necessary materials or supplies, war, acts of God or the public enemy, riot or civil commotion, voluntary or involuntary compliance with any law, prohibition, restraint, order, direction, request, rule or regulation promulgated by any government, Federal or State, or any subdivision or agency thereof, or any other cause beyond its control (whether or not of the same character as the foregoing), then during such period the Seller without liability may reduce the quantities herein specified in proportion to the reduction or restriction upon the Seller's production and/or deliveries, and the Seller shall be required only to apportion the paper which it has available for shipment during such period of reduced production, on a pro rata basis among all customers with whom it then has contracts; and if for any such cause, including the failure of International Color Printing Company to erect a printing plant at or nearby Coosa Pines, Alabama, the International Color Printing Company's ability to accept and/or utilize paper is hereafter impaired, reduced, or restricted, the Purchaser's obligation to accept paper shall be reduced during the period of such disability by such quantity as the International Color Printing Company shall be unable to accept and/or utilize. In any such case the tonnage which the Seller is unable to deliver or the International Color

Printing Company to receive and/or utilize shall be eliminated from this agreement and the parties hereto shall be relieved of all liability with respect thereto.

9. DEFAULT.

Upon failure of Purchaser to pay any amount when due or to fulfill any other provision hereof, the Seller, without demand for payments past due, may at its option:

(a) Make deliveries subject to payment of sight draft attached to bill of lading without waiving or impairing Seller's right to adopt subsequently the course provided for in clause (b); or

(b) Refuse to furnish any more paper and declare the Purchaser in default and all of the obligations of the Purchaser hereunder due forthwith, notwithstanding the terms of the agreement, and the Purchaser shall be and remain liable to the Seller for all loss and damage sustained by reason of such failure to pay and/or default.

3106 Because of the difficulty in ascertaining the loss or damage which the Seller may sustain by reason of any such failure or default by the Purchaser, the sum of \$10 per ton for all paper covered by this contract and undelivered is agreed upon and fixed as liquidated damages, which the Purchaser agrees to pay to the Seller forthwith in addition to all amounts, including interest, for paper and cores delivered and not paid for or returned.

10. ASSIGNABILITY OF CONTRACT.

This contract shall not be assigned without the prior written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or reorganization in which the purchaser participates.

11. ARBITRATION.

It is hereby agreed that if at any time any dispute, difference, or question shall arise between the parties hereto or their respective successors or assigns, or any of them, relative to the construction, meaning, or effect of this agreement or any provision hereof or the rights or liabilities of the parties hereto respectively or of their successors or assigns under this agree-

ment in relation to the premises, then every such dispute, difference, or question shall be settled by arbitration in accordance with the rules and procedures, then obtaining, of the American Arbitration Association (with such modification as may be required to comply with the law of Alabama), and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

12. NOTICES.

Notices hereunder shall be in writing and may be given by either party to the other by registered mail addressed as specified below, or to such other address as may be substituted by written notice from either party to the other.

Coosa River Newsprint Com-	Coosa Pines,	Alabama,
pany, Seller	City	State
Hearst Enterprises, Inc.	New York	New York
Purchaser	City	State

A notice so given by registered mail shall be deemed to have been received by the party to whom addressed on the third day following the date of mailing.

13. AMENDMENT.

This contract constitutes the entire agreement between the parties hereto and shall not be altered by either party except by consent of both parties in writing executed by their respective representatives duly authorized.

14. EXECUTION.

This contract shall be executed at Seller's office in three original counterparts and shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

This agreement shall not be binding until executed by both parties by their respective representatives and upon such execution shall be binding upon and inure to the benefit of the parties hereto and, if assigned in accordance with provision of paragraph 10, upon their respective successors and assigns.

IN WITNESS WHEREOF, Each of the parties has caused this contract to be executed in its behalf by its appropriate representative duly authorized for this purpose, this 8th day of December, 1954.

Hearst Enterprises, Inc.,
Purchaser
by R. O. STERNBERGER,
Title President

Coosa River Newsprint
Company, Seller
by RON WATT,
Title Vice-President

3107 [P-57 for ident., p. 57 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

COOSA RIVER NEWSPRINT COMPANY,
Coosa Pines, Alabama,
November 19, 1954.

Mr. R. O. STERNBERGER, *President,*
Hearst Enterprises, Inc.,
Room 309-959 Eighth Avenue,
New York, New York.

DEAR BOB: In accordance with our telephone conversations today, we submit herewith quintuplicate copies of a contract to cover estimated newsprint requirements of a comic printing plant to be erected by International Color Printing Company at or nearby Coosa Pines, Alabama. After executing, kindly return all copies for our completing signatures, following which one copy (or two if desired) will be returned for your contract files.

Submission of this contract is predicated upon the assumption that said printing plant will be located at Coosa Pines, Childersburg, Sylacauga, Talladega, Anniston or Birmingham, Alabama, or some intermediate point.

It is understood that the quantities stated are honest estimates of the probable requirements and that we will supply you and you will purchase from us such requirements up to the amounts specified. Excess requirements are first to be offered us, as provided in the contract.

Notwithstanding the terms of the contract, it is understood we will be agreeable to an arrangement permitting trucking of the tonnage from our mill to International Color Printing Company's printing plant by their own trucks. In that event, title will pass F.O.B. trucks at our mill loading platform, instead of F.O.B. cars, as provided in the contract and the allowance in lieu of freight will be the current published trucking rate to destinations above mentioned, of 15c per 100 pounds.

Yours sincerely,

COOSA RIVER NEWSPRINT COMPANY,
RALPH /s/ *Vice President.*

RMW:nbm
Encs.

3108 [P-58 for ident., P. 58 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING Co.,
Newspaper Comic and Magazine Supplements,
268 George Avenue, Wilkes-Barre, Pa.,
Phone, Wilkes-Barre VA 4-7871, December 30, 1964.
19 Color Presses, Total Capacity 40 Million Four-Page Sections
Per Week, Branch Plant, 107 South Street, Peoria, Ill., Phone,
Peoria 4-3013

Mr. FRANK J. NICHT,
King Features Syndicate,
235 East 45th Street,
New York 17, N.Y.

DEAR FRANK: I am enclosing the first form of a contract to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the Southern Plant but I think you will be perfectly willing to agree that when a Southern plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation saving will accrue to International Color Printing Company. This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond plant. I realize fully unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory profit. Therefore, there should be a further adjustment in price to allow us to what we both will agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further but I am giving it to you now so you will have a chance to look it over

through the week end and maybe I will be able to see you sometime next week in New York.

Best regards.

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN.

JJG:MM

3100 [P-59 for ident., p. 59 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

February 13, 1956.

Mr. CALVIN CLYDE Jr.,
General Manager,
The T. B. Butler Publishing Co.,
Tyler, Texas.

DEAR MR. CLYDE: Our building at Lufkin is going up and we expect to be operating in September of 1956.

We have purchased International Color Printing Co. and likely will move some of this business to Lufkin.

We plan also to print for King Features on such contracts King holds in Texas but the details of this arrangement have not been worked out.

My suggestion is that you go along with King Features for the present but limit your contract to the shortest possible period so that you will be free to change if circumstances so arrange themselves that such a move is an advantageous one for you.

Kindest personal regards,

J. W. KOESSLER,

President.

JWK:bv

3110 [P. 60 for ident., P. 60 in evid., H. T. Noel, official reporter, U.S. district court.]

AGREEMENT made this 22nd day of April, 1958, between KING FEATURES SYNDICATE, Division of the Hearst Corp., hereinafter called "Syndicate", and INTERNATIONAL COLOR PRINTING COMPANY, hereinafter called "International".

WHEREAS Syndicate and International are the parties to an agreement made the 30th day of July, 1955, hereinafter called the "Contract".

NOW, THEREFORE, the parties agree as follows:

1. International agrees that printing done for Syndicate by Greater Buffalo Press, Inc., Buffalo, New York, shall be counted toward the printing business which Syndicate is obligated to give to International under Article Second of the Contract.

2. In the event International discontinues the operation of its plant at Peoria or any other plant, International will so adjust its prices that after the discontinuance of the operation of any such plant total orders for customers of the Syndicate which were being printed at any such plant before the discontinuance of the operation of such plant shall in the aggregate carry no higher net delivered costs, printing and transportation included, than at the time of such discontinuance of operation of such plant.

3. International Color Printing Company shall be privileged to place the printing orders so transferred from Peoria or any of its printing stations to a printing station of The Greater Buffalo Press, Inc., where, without penalty to the Syndicate, it may enjoy the lowest transportation rate to the printing order's destination.

4. These provisions do not preclude an increase in transportation rates in the event of specific or general increases in common carrier rates.

5. In the event International shall offer its printing plant at Wilkes-Barre, Pennsylvania, or any other of its printing plants for sale, International agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer International shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been
3111 offered to Syndicate. If International desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within

which to accept or reject the offer. This procedure shall be repeated as often as International lowers its price or alters its terms from the original offer.

IN WITNESS WHEREOF The Hearst Corporation, King Features Syndicate Division, has caused this agreement to be executed by Frank J. Nicht, its General Sales Manager, and International Color Printing Company by Joseph J. Gorman its President.

KING FEATURES SYNDICATE

Division of the Hearst Corporation.

By FRANK J. NICHT

General Sales Manager.

INTERNATIONAL COLOR PRINTING CO.

By JOSEPH J. GORMAN

President.

Witness:

MARGARET LUTZ

GEORGE C. DRESCOLL

J. W. KOESSLER.

3254 [P-73 for ident., P-73 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

May 2, 1958.

(transcribed May 7)

From: G. C. DRISCOLL

To: Mr. FRANK J. NICHT Re: Greater Buffalo Press—WALTER KOESSLER

DEAR MR. NICHT: Under separate cover I am forwarding you copies of Greater Buffalo contracts—these have been dated and signed by Walter Koessler.

He told me he didn't have any copies of the ICP contracts since these are with Joe Gorman in Wilkes-Barre, but he will contact Joe and have him make up four or five copies to forward along to you. I don't know whether he is telling the truth on this or not—but the way he sounded, I am assuming he didn't have copies of these contracts. All we can do is wait and see what comes of this.

I spent most of the day and on into the night with Walter Koessler. In fact, I was out at his home and we went out to dinner with his wife. She is very charming. She mentioned she

would like to, informally, at a luncheon sometime when they are in New York, meet George Sokolski. They are great admirers of Sokolsky. Too, she said if she could meet some of these people, she isn't a hero worshipper, but she does like Dorothy Kilgallen, and they are both great admirers of Jim Bishop and Pegler. Perhaps in a conversation or note to Koessler, you might mention this can be arranged.

He still insists he would like to have Frank Nicht come up to Buffalo and take a trip on his boat—he invited me to go along. He thinks it would do you good as it is very relaxing.

During my talk with Koessler, I found out they do over two million dollars a year in commercial printing in the Buffalo plant. In another three weeks, all of the color comic work will be done in Dunkirk. I went down to Dunkirk and spent about four hours at the plant going all the way through this again with his key man.

This fellow informed me they don't even have a set of presses for Lufkin, Texas, since they have a set on the floor at Dunkirk which they are trying to dismantle but because of increased work, they will never get these torn down to remove them to Alabama. Too, he informed me the same condition exists in Alabama.

During my talk with Koessler, I learned he has had several sessions with Jim Richter, Publisher of the Buffalo Evening News. Apparently this contract may finish up in Koessler's hands. Also during the talk, he said in order to get Hornady and Newport News to get the hell out of the picture, this operation should be bought and then we could eliminate any

3255 difficulty when it comes to handling prices. He said he is a great believer of keeping the price structure solid, and the only way you can accomplish this is to increase rates when you have increased costs.

Cordially,

GEORGE C. DRISCOLL.

GCD;pcg [P-74 for ident., P-74 in evid.; H. T. NOEL,
Official Reporter, U.S. District Court.]

THIS AGREEMENT between GREATER BUF-
3256 FALO PRESS INC., a New York corporation, herein-
after called the "Press", and KING FEATURES SYN-
DICATE, a division of The Hearst Corporation, a Delaware
corporation, hereinafter called the "Syndicate".

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplements.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate its sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any sale by Press to an account not listed in Schedule A, a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and billed directly by Syndicate who shall pay Press at the rates specified in 3257 Schedule B and shall be entitled to retain as its commission any excess over such rates provided however that whenever Press shall sell or offer to sell any account at a net price after all allowances and commissions which is not at least fifty cents a thousand above the rates specified in Schedule B, the rates listed in Schedule B shall be reduced so that they are fifty cents a thousand less than such net price at which Press so sold or offered to sell.

3. Press will send to Syndicate duplicate invoices on all accounts sold by Press directly and not through Syndicate.

4. Press agrees not to solicit or contact any accounts which the press is printing for the Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class 3258 or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of its printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not there-

after printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company for printing such supplements at the time of such discontinuance of the operation of such plant.

3260 12. This agreement shall run from September 15, 1957 to September 14, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of September 14, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

14. Contract only to business after date of contract.

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.

By.....

President.

KING FEATURES SYNDICATE

Division of The Hearst Corporation

By.....

General Sales Manager.

3261

SCHEDULE "A"

The Dallas News 50¢ per M
 The Houston Chronicle 50¢ per M
 The San Antonio Express 50¢ per M
 The New Orleans Times Picayune 50¢ per M
 The New Orleans States 50¢ per M
 The Shreveport Times 50¢ per M
 The Monroe World 50¢ per M
 The Waterloo Courier \$1.00 per M
 The Elmira Telegram 50¢ per M
 The Wichita Falls Times 50¢ per M
 The Harte Hanks Newspapers 50¢ per M
 The Calgary Herald 83¢ per M

3262 [P-75 for ident., p-75 in evid., H. T. NOEL, Official Reporter, U.S. District Court.]

MEMORANDUM

NOVEMBER 7, 1957.

I telephoned Mr. Koessler at Buffalo this afternoon and went over with him again the notations he made on our last contract draft.

Clause One: Paragraph B--

Mr. Koessler wants to include an understanding to the effect that there will be no commission paid on Scripps-Howard newspaper business or the Canadian Weekend business.

I read Clause Two to him and ask him why it wouldn't be just as well to let this stand and he seemed to agree. As a matter of fact, I think he seemed to be a little confused about the marginal note that he made on that clause. Anyway, let's try it as it is written.

Clause Four:--

This clause should be changed a bit so that it will read something like this: Press agrees not to solicit or contact any accounts which the Press or its affiliated company or companies is printing for the Syndicate.

Clause Fourteen:--

This was inserted by Mr. Koessler. His notation reads "Contract only to business after date of contract." This means that any understandings, especially as concerns cut-ins, etc., are not to be retroactive before the date of the contract.

I discussed the rate schedule with Mr. Koessler and I think we must accept it as being the minimum rate schedule but he did say this, and this is very important, the rates specified in that schedule will be good throughout the year 1958. In other words, there are some increases to come along but they are absorbed in the rate schedule as it stands throughout the year of 1958.

FJN:mec

3283 [P-76 for ident., P-76 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

September 11, 1957

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
650 Eighth Avenue,
New York 10, New York.

Dear Gorty: I sent our new contract draft to Koessler last Monday, September 9th.

Sincerely yours,

FJN:mec

F. J. NICH.

3284 [P-77 for ident., P-77 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

GENERAL OFFICES, HEARST NEWSPAPERS,
HEARST MAGAZINE BUILDING,
57TH STREET AT 8TH AVENUE,
New York, June 27, 1955.

To: Mr. F. J. Nicht.

From: Mr. J. D. Gortatowsky.

DEAR FRANK: What ever happened to that friend in Greater Buffalo?

We were going to have a meeting and try to work something out.

GORTY
J. D. G.

3285 [P-78 for ident., P-78 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

GENERAL OFFICES, HEARST NEWSPAPERS,
Hearst Magazine Building,
57th Street at 8th Avenue,
New York, June 30, 1955.

To: Mr. F. J. Nicht

From: Mr. J. D. Gortatowsky

DEAR FRANK: I thought you were going to discuss with Greater Buffalo a deal whereby there would be a combination of interests. Buffalo would take over all the printing, including I.C.P., and you would do the selling.

That's the deal we talked about—you, the Buffalo man and myself. Then the two of you were to pursue the matter and come back to me.

I never heard any more about that deal. What happened?

GORTY,
J. D. G.

(Gortatowsky, King Features Exclusive Selling Agent.)

3266 [P-80 for ident., P-80 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

FEBRUARY 11, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

DEAR GORTY: It was about the middle of December that you, Mr. Koessler and I met at Mr. Graustein's office. Since then I have reminded Walter Koessler twice about this, but no word has come through from him regarding the proposed contract draft.

In response to my first query he told me that due to the passing of his mother and tax matters, he was held up, but he would get to it shortly.

Sincerely yours,

FJN:mec
cc: Frank C. McLearn

F. J. NICH.

3267 [P-81 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Gortatowsky: Nicht suggests getting together with Scripps-Howard to start a printing plant.

JUNE 20, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

Dear Gorty: I want to make one more contribution to possible solutions to our readyprint problem.

A number of newspapers in competitive fields have formed, as you probably know, mechanical production companies. The list will undoubtedly grow. Just a few of these companies are operating in Birmingham, Shreveport, Nashville, Chattanooga, Salt Lake City, El Paso, Tulsa, Evansville, etc.

I suggest therefore, we might try to interest the Scripps-Howard people in a production setup with us based on comic supplement printing. To begin with there are the Hearst newspaper comic supplements and the readyprint business controlled by KFS. Scripps-Howard people have comic supplements in Knoxville, Memphis, Evansville, Columbus, Indianapolis, to mention some, and also comic supplements printed for non-Scripps-Howard newspapers, through NEA.

A combination such as this could have a central comic supplement printing plant or two logically located geographically.

We might even consider the possible inclusion of the New-house newspapers.

If something like this could be worked out it would assist in restoring the strength of our readyprint position and pose a threat to Koessler. I think it would also create a more competitive condition in the readyprint field, a rather desirable accomplishment. It might also give us trading possibilities.

Sincerely yours,

FJN:mec

F. J. NICHOL.

cc:F. C. McLearn

3268 [P-82 for ident. P-82 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 4, 1957.

Office memo: KING FEATURES SYNDICATE

To: MR. F. J. NICHOL

From: MR. J. D. GORTATOWSKY

DEAR FRANK: This acknowledges your memorandum of September 3. I think you should go ahead with your negotiations of the new contract with Koessler.

Gorty
J. D. G.

Gortatowsky orders dealing with G.B.P.

8269 [P-83 for ident. P-83 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,
835 East 46th Street,
New York 17, N.Y.,
Tel. Murray Hill 2-5600,
Cable Address: Kingsyn New York,
October 22, 1957.

G.B.P. did you want to sign contract.

To: Mr. F. J. NIGHT

From: Mr. J. D. GORTATOWSKY

DEAR FRANK: We have a lot of dope on Waterbury now, but as I have told you repeatedly, we simply can't do anything until we get the Buffalo contract signed. The last time I talked to you you said you were going to talk to Graustein to see if there was any reason why we should delay the signing.

This thing has gone on for so many months, due primarily to Buffalo's stalling tactics that I'm wondering if Mr. Koessler is serious or just playing us for suckers.

We can't move until the Buffalo contract is signed because we can't know how much leeway we will have for printing in other plants, including those owned by us or leased by us.

Gorty
J. D. G.

3270 [P-84 for ident. P-84 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

Regarding unsigned contracts.

Gortatowsky interested in contract he proposed.

OCTOBER 23, 1957.

MR. J. D. GORTATOWSKY,
Hearst Newspapers,
959 Eighth Avenue,
New York, New York

DEAR GORTY: I am even more upset than you are concerning the continuing delay in getting something signed from Mr. Koessler.

Last week I talked to Mr. Graustein about this after consultation with you. I asked Mr. Graustein if it wouldn't be well for me to telephone Koessler and he thought I should do

so, but to refer to the unsigned document in an incidental manner.

I talked with Mr. Koessler at his home because there was plenty of unfinished business on our agenda. He repeated that the paper looked all right to him and that he would come down here. As a matter of fact, he set Friday, November 1, as the meeting date.

I suggest that I see Koessler alone this time because if he brings down what we want, I am pretty sure it will involve further revision.

You may have other ideas.

Sincerely yours,

F. J. NICHT.

FJN:ML

cc: F. C. McLean

3271 [P-85 for ident., P-85 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th St.,

New York 17, N.Y.,

Cable Address, KINGSYN New York,

All communications must be addressed to

King Features Syndicate,

11/15/57.

To: Mr. F. J. Nicht

From: Mr. J. D. Gortatowsky

DEAR FRANK: I don't want to proceed with Waterbury until I know we have closed the deal in Buffalo. I just know that it would be impossible to determine exactly what we can do and should do with Waterbury until we know exactly what the Buffalo contract provides. I judge from the last memos I've received from you that the Buffalo deal will be closed any day.

Best regards.

GORTY,
J. D. G.

3272 [P-80 for ident., P-80 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

November 13, 1957.

Mr. J. D. Gortatowsky,
Hearst Newspapers,
935 Eighth Avenue,
New York 19, New York.

DEAR GORTY: I would like to suggest that the Waterbury matter be given further consideration at this time. Of course, you will decide whether or not negotiations are to be pursued.

If the matter is to be gone into further, I see no reason why these negotiations should not continue regardless of the Koessler negotiations. Any negotiations with Waterbury would naturally consume some time.

Sincerely yours,

F. J. NEHT.

FJN:mec

3273 [P-87 for ident., P-87 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

KING FEATURES SYNDICATE,

235 East 45th Street,

New York 17, N.Y.,

Tel. MUrray Hill 2-5600,

Cable Address: KINGSTON New York.

4/15/58.

To: Mr. F. J. Neht.

From: Mr. J. D. Gortatowsky.

DEAR FRANK: I don't know what to write you about the Wilmington situation because I don't know the status of the contract with Koessler. If you could get that closed up one way or the other, we could work out a program but it's utterly impossible to do that until we know exactly what the deal is with Greater Buffalo and for what period of time.

When will you be seeing Graustein?

When will you be seeing Koessler?

GORTY.
J.D.G.

cc: McLean-4/10/58.

3874 [P-88 for ident., P-88 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 22, 1958.

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York.

Dan Gorry: Last April, when I obtained Mr. Koessler's signature to our sales contract, you suggested I consult Mr. Graustein. This was done the same time we submitted a supplemental letter agreement to Mr. Koessler, copy of which I am enclosing.

I've talked to Mr. Koessler concerning this supplemental agreement a number of times and have had a representative see him in Buffalo. In each instance Mr. Koessler says it looks all right to him and he'll send it along. To date he hasn't done so.

When I saw Mr. Graustein concerning this supplemental letter I don't think he was too sanguine that Mr. Koessler would sign it, in which event we should go ahead and sign the base contract. Personally, I think this would be a good thing to do because negotiations with Mr. Koessler can be almost interminable.

The contract leaves much to be desired but I think you feel that it would be better to have this rather than no written understanding at all.

Our readyprint profit continues to decrease which, under the circumstances, is inevitable. I don't think the Syndicate can ever have the protection it should have for its readyprint business without a plant or plants of its own. That would be the only way to keep Mr. Koessler in line.

Sincerely yours,

F. J. NICH.

FJN:nen

3275 [P-89 for ident., P-89 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MAY 5, 1958.

KING FEATURES SYNDICATE,
A Division of The Hearst Corporation,
235 East 45th Street,
New York 17, N.Y.

DEAR SIRs: This is to confirm that while in our agreement with you of even date there is a provision that we will sell our printing services to new accounts at no lower prices than those listed in Schedule B plus 50c per thousand, it is also a part of the agreement (i) that this provision is applicable to sales by any account referred to in the parenthesis in paragraph 1(b) to or for new accounts, and (ii) that we will not sell our printing services directly or indirectly to any account referred to in the parenthesis in paragraph 1(b) at lower prices than those listed in Schedule B plus 50c per thousand.

Will you confirm this understanding.

Yours very truly,

GREATER BUFFALO PRESS INC.,
By J. W. KOESSLER,

President.

We confirm the understanding stated in the above letter.

KING FEATURES SYNDICATE,
A DIVISION OF THE HEARST CORPORATION,
By FRANK J. NICHT.

THIS AGREEMENT between GREATER BUFFALO PRESS INC., a New York Corporation, hereinafter called the "Press," and KING FEATURES SYNDICATE, a division of The Hearst Corporation, a Delaware Corporation, hereinafter called the "Syndicate."

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplement.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate.

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any new sale by Press to an account not listed in Schedule A (except sales to Scripps Howard Newspapers and affiliated companies and sales of the publication known as Weekend), and present accounts of the Papert Newspaper Group a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and billed directly by Syndicate which shall pay Press at the rates specified in Schedule B and shall be entitled to retain as its commission any excess over such rates. The rates specified in Schedule B may be increased or decreased in accordance with and in proportion to increased or decreased labor rates or material or service costs. The Press agrees to sell its printing services to new accounts at no lower prices than those listed in Schedule B plus 50c per thousand.

3. Press will send to Syndicate duplicate invoices on all such new accounts sold by Press directly and not through Syndicate.

The word "new" in paragraphs 1B, 2 and 3 is defined as accounts not presently held by Greater Buffalo Press Inc.

4. Press agrees not to solicit or contact any accounts which Press or its affiliated company or companies is printing for Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes-Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements

ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of its 3270 printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not thereafter printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company 3280 for printing such supplements at the time of such discontinuance of the operation of such plant.

12. This agreement shall run from December 1, 1957 to November 30, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of November 30, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

14. This contract shall be effective May 5, 1958.

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by..... its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.
By J. W. KORNBLER,

President.

KING FEATURES SYNDICATE,
DIVISION OF THE HEARST
CORPORATION,

By FRANK J. NICHT,
General Sales Manager.

GEORGE C. DRISCOLL,

MARGARET LUTZ.

SCHEDULE "A"

The Dallas News 50¢ per M
The Houston Chronicle 50¢ per M
The San Antonio Express 50¢ per M
The New Orleans Times Picayune 50¢ per M
The New Orleans States 50¢ per M
The Shreveport Times 50¢ per M
The Monroe World 50¢ per M
The Waterloo Courier \$1.00 per M
The Elmira Telegram 50¢ per M
The Wichita Falls Times 50¢ per M
The Harte Hanks Newspapers 50¢ per M
The Calgary Herald 83¢ per M

3284 [P-90 for ident., P-90 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 26, 1957.

Memorandum:

On July 25, Walter Koessler, Joe Gorman and I met at the Ritz-Tower and spent several hours together discussing the pending contract. The meeting was extremely friendly and I don't think we're going to have any difficulty working out a contract. This contract won't be what we would like to have it be, but it will be far better than having no written understanding at all.

I told Mr. Koessler what we wanted first of all is the protection of King Features Syndicate business and that the contract will accomplish.

I told him that there should be a favored nation understanding and he agreed but we will have to see how the lawyers are going to put this into the agreement.

I questioned his prices and this was more or less left up in the air. When we draft our next agreement we'll have to work this out.

I discussed the so-called prospect list. I don't think this is going to lead us into any difficulty, although I told Koessler it seemed rather ridiculous for GBP and King to be working on the same prospect. This ought to work itself out as time goes on, point by point. Meanwhile, Koessler did agree not to do anything about the South Bend TRIBUNE and he said he was going to write me some suggestions about this.

We talked about the abandonment of printing plants and Peoria undoubtedly will be dropped.

I talked about NEA and other syndicates and I made it clear that whenever we could get a readyprint run even though it was handled by a competitor we'd proceed to do so if the inclusion of our pages were to be involved.

I told Koessler that the ICP contract would "stand as written." This should be so because in that contract is a clause under which ICP would have to obtain our consent if any other business were to be placed in the Sylacauga plant.

We talked about commissions. We can have a commission on the Lake Charles business, although this won't amount to much inasmuch as the run is short. Koessler repeated again

that we will get our commission on Dallas, San Antonio, and Houston.

I brought up the matter of a commission on all of the Lufkin business but we didn't seem to get very far with this. Koessler said that there was so little margin in the Papert business that he couldn't pay a commission on that. This is something we can thrash out later.

I brought up the matter of a reduction in price following the introduction of economies at the different plants. Koessler takes the position that these economies are necessary at Wilkes-Barre in order to bring that plant up to a more profitable production point.

We talked about the sales agency part of our contract. I suppose this should continue to be in our contract but undoubtedly we can't insert the word exclusive.

3285 Koessler repeated again that any difference in transportation when a plant is closed such as Peoria will be made up.

There was, of course, general discussion, not only about the present but the future. Koessler keeps on telling me that we have nothing to fear and that we can always expect preferential treatment. However, I pointed out a number of cases where I didn't think this was so. I brought up the Lake Charles matter. He tried to justify what was done there because it involved two other small runs owned by the same people. I told him he should have advised us that he was working on this. I stressed the point that GBP should keep us posted more closely on their activities.

He laughingly referred to the bill for \$1,500 which he received from the legal department. He thought the charge was high. He told me that he had another bill for \$1,500 from his own lawyer.

Koessler also told me that he didn't think we should abandon our molding charges. I do think we should refer to these as combination charges, however.

3286 [P-91 for ident., P-91 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 23, 1957.

Memorandum:

Outline to Mr. K. what my conception of a simple agreement should be. The lawyers have confused me and maybe they have confused him (consult my notes).

However, the agreement should have positive mutuality—not just a convenience agreement. It should not breed double-talk and I think we've had some of that up to this time.

Try, more than ever, to convince him of my sincerity and I would like to feel the same about him.

Remind him of the ICP deal. I am sure I was responsible for promoting it and I would like to have him recognize more than ever that fact. I don't know how far we can get by referring to specific instances, but it might be well to recite some of them: Jackson, Harte-Hanks, other southern situations, and too many others to mention. After all this is done, then I think I should start out to give him a hazy idea of what is in my mind in an overall way.

If he goes along with me and indicates a desire to commit it to an agreement then Mr. K. has a lot to gain and so would we, but he's got to come clean. It's a great plan and one I am sure is easy of consummation even if the capital cost should run into millions but this capital cost could be eliminated or defrayed so far as he is concerned under the possibility of a lease arrangement, but always we must make sure we are in control. The whole thing I am sure could be carried to completion but nowhere along the way can there be any doublecrossing.

Our present arrangement isn't bad but it certainly isn't what it was intended on our part, and we are treated if not like an outsider but perhaps on a parity with other syndicates and not as the favored nation which really should be our status.

FJN:mec

1513

3287 [P-92 for ident., P-92 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 17, 1954.

MR. HOUSTON HARTE,
The Harte-Hanks Newspapers,
San Angelo, Texas

DEAR MR. HARTE: On my visit to Lufkin, Texas on June 3rd I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Co. beginning with January 1, 1957.

We are completing plans, for the building, to house the color plant at Lufkin.

We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the Southwest area.

It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period.

I will keep you informed on the progress of our operation at Lufkin.

Thank you for the assistance you have given our company on this matter.

Very truly yours,

J. W. KOESSLER, *President.*

JWK:br

3288 [P-93 for ident., P-93 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JULY 1, 1954.

MR. JAS. F. CHAMBERS, JR.,
Vice Pres. & General Manager,
The Daily Times Herald
Dallas, Texas

DEAR JIM: Cancellation notices never brighten our day and one from you is particularly disturbing. However, your notice of June 21st mitigates the sting to some extent.

Your cancellation notice has been recorded and I earnestly hope that we will be able to work out a new supplement printing contract with you long before its termination date.

We are continuing to expand our comic supplement printing activities and I'll keep you posted as these plans develop.

With warm personal regards,

Sincerely,

F. J. NICHT

FJN:er

3289

THE DAILY TIMES HERALD,

First in Dallas—and Growing,

Jas. F. Chambers, Jr.,

Vice-President and General Manager,

June 21, 1954.

MR. F. J. NICHT,
General Sales Manager,
King Features Syndicate,
235 East 45th Street,
New York 17, New York

DEAR FRANK: Attached you will find a copy of a letter which I received today from Mr. Koessler.

Since we have not heard anything specific from you regarding the future of our color contract following expiration of the contract under which we are now operating, I wondered if you might have anything specific to add at this time.

There is always the likelihood that we might not want to make an agreement with Greater Buffalo Press following the completion of our present contract with you. There is also the possibility that we might want to explore an agreement with someone other than King following the expiration of our present contract. Therefore, I will appreciate it if you will accept this letter as your legal notice under the terms of the contract now in force that we wish to terminate the agreement after October 29, 1955.

You will understand, of course, that this step is taken merely as a protective measure.

With best personal regards.

Sincerely,

JAS. F. CHAMBERS, JR.,
Vice Pres. & General Manager.

JFC:jw

THE GREATER BUFFALO PRESS, INC.,
 302 Grote Street,
 Buffalo 7, N.Y.,
 June 17, 1954.

Mr. JAMES F. CHAMBERS, Jr.,
 Vice President and General Manager,
 The Dallas Times Herald,
 Dallas, Texas.

DEAR MR. CHAMBERS: On my visit to Lufkin, Texas on June 3rd, I signed a commitment to purchase 15,000 tons of newsprint from the Southland Paper Co. beginning with January 1, 1957.

We are completing plans, for the building, to house the color plant at Lufkin.

We have reached an agreement, verbal and tentative in character, with Frank Nicht of the King Features Syndicate, to print the sections that syndicate has under contract in the Southwest area.

It will be some months before we are operating in Lufkin. In the meantime, I would appreciate your limiting your agreement to King Features to its present period.

I will keep you informed on the progress of our operation at Lufkin.

Thank you for the assistance you have given our company on this matter.

Very truly yours,

J. W. KOESSLER, *President.*

391 [P. 94 for ident., P-94 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MEMORANDUM

AUGUST 16, 1954.

On August 11, Mr. Burns and I spent several hours with Walter Koessler of the Greater Buffalo Press at his office. A lot of ground was covered and this about summarizes it:

We worked out what I hope will be an understandable rate scale for the Toledo, Youngstown and Erie runs we are now turning over to Greater Buffalo Press. Additional runs are to be separately agreed upon.

Mr. Koessler told me that nothing had happened to change his plans regarding Lufkin and it must be assumed they are going ahead. Koessler expects to be under way the latter part of 1955 and certainly by January 1, 1956.

I indicated to Mr. Koessler what we had in mind in the South and I gathered from his reaction that they had no plans to establish another Southern printing plant—not unless Koessler wanted to be secretive.

We talked about our competitors, Eastern and World Color. Koessler may be a little bit disturbed by World Color but apparently he doesn't fear them too much at the Kansas City Star and St. Louis Globe Democrat because he claims World Color cannot go up and down on odd page supplements.

Regarding our proposed Southern plant, I asked Koessler if we could make a deal with him like we have at Lufkin for the printing of the Atlanta, Nashville and Miami runs, but he didn't say yes and he didn't say no definitely, but I gathered there might be possibilities in this connection.

I also gathered that Greater Buffalo Press is a bit cautious about making supplement printing rate increases, fearful they might get some cancellations.

He seemed to think that they would continue to print the Kansas City Star and St. Louis Globe Democrat runs at Buffalo even when their plant at Lufkin is underway.

I spoke to him about the loss of molding revenue and I think he is going to be careful about this hereafter.

I asked him about the Harte-Hanks and Fentress newspaper group printings. He didn't seem to enthuse very much about this but anyway it's probably premature to go into this. Koessler wants to stick to the larger runs, of course, and if smaller ones are printed there is going to be a cover charge. I told him what the Chicago Tribune was doing in connection with going after supplement printing, mentioning the Bozeman and Paducah cases. He undoubtedly made a mental note of this. I told him we would consider it out of order to quote on any of these runs that are ours. He declared he didn't know about the Bozeman matter.

I asked him for transportation rates to Richmond and Bangor, Maine and he said they would be forthcoming.

I think we can expect continuing and perhaps increasing cooperation from Greater Buffalo Press. Our relations undoubt-

edly are becoming stronger and stronger. Koessler asked me a number of questions about ICP and Gorman which leads me to believe he might be interested in a purchase. That was very interesting to me but I deliberately refrained from discussing it too far.

FJN:ML

[For ident. P-95 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,
WEB PRESS COLOR PRINTING,
302 Grote Street,
Telephone BEdford 6410,
Buffalo 7, N.Y.,
August 27, 1954.

Mr. F. J. NICHT,
King Features Syndicate,
235 East 45th St.,
New York 17, New York

DEAR FRANK: I have not even discussed the Texas plant with N.E.A.

It is our plan to develop the new accounts along the lines discussed with you, and to handle the accounts you serve in the manner in which we have talked about.

This, as I see it, covers all the business in the area—present and future.

Kindest regards,

J. W. Koessler
J. W. KOESSLER,
President.

JWK:br

FEBRUARY 26, 1958.

NOTES REGARDING GREATER BUFFALO PRESS
(Page 2.)

Points for clarification:

St. Petersburg, Fla., Independent. NEA underbid King.
Shouldn't King be compensated at the rate of 50¢ per M?

Niagara Falls, N.Y., Gazette. Shouldn't we be getting 50¢ per M?

Buffalo, N.Y., News—it should be our printing contract.

We're only getting 50¢ on Shreveport—we lost much more. When Lufkin plant's in operation Koessler agreed we wouldn't lose anything profitwise.

GBP is printing Memphis Commercial Appeal. Why no commission for KFS? Koessler letter January 26, 1956, stated, "If, however, we get in the picture as printers, we will see that King is cut in for something as much as we can squeeze out of it."

How could NEA quote Dubuque \$12.00 per M on an 8-page standard special makeready of 40,000 as they just did?

Gary, Ind. POST TRIBUNE—what's the next step on the 6-page standard inquiry? Our 8-page contract has quite sometime to run.

Sarasota, Fla. Herald-Tribune & Journall—has an NEA 8-page section. We asked ICP for a price and they want \$65.00 over contract. The price is not competitive. What could GBP do?

RKR.

3296 [P-98 for ident., P-98 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

THE GREATER BUFFALO PRESS INC.,

WEB PRESS COLOR PRINTING,

302 Grote Street,

Telephone BEdford 6410,

Buffalo 7, NY.,

August 25, 1955.

Mr. F. J. NICHOL,
King Features Syndicate,
235 E. 45th St.,
New York 17, N.Y.

DEAR FRANK: It appears to me that the best way of handling the N.E.A. problem is to let N.E.A. hold what they have with an opportunity to get a decent price for it and thus realize some income.

From the conversation of last week I think this can be worked out.

It seems that there will always be printers who will take in jobs at low cost and it takes a long time for them to find out that they are wasting their time. When they finally decide to quit, there will be another to carry on.

Printers by themselves are not the problem because they have no background or sales facilities to attract the confidence or interest of the publisher.

The most advantageous spot to print New Orleans would be at Lufkin.

We will however, print the job anywhere that policy dictates that it should be printed.

Kindest regards,

J. W. KOESSLER,
President.

JWK:br

Extracts of "A" made for Mr. Hornady and Times-Picayune follow-up

3297 [p. 99 for ident, H. T. NOEL, Official Reporter,
U.S. District Court.]

Memorandum:

DECEMBER 9, 1955.

I practically read everything in my self-memorandum of December 9 to Mr. Koessler when he was in my office this morning. I have every reason to believe that we are not going to have any trouble in agreeing on practically all points which we cannot commit to a contract.

In an overall way, Mr. Koessler supported my feeling that we would like to look upon him and Greater Buffalo Press in the same light that we have always looked upon our relationship with ICP for more than 30 years and I think this will come to pass.

The contract draft which has been re-submitted to him is now in the hands of his lawyer and he promised to have it returned to us soon. Then we'll have to see what if any changes are made in it.

I talked to him about the relationships with Chicago Tribune, NEA and especially the Harte-Hanks deal. Mr. Koessler assured me that he would go along with us in working out the Harte-Hanks problem. I made it clear to him that I didn't think he should have negotiated any kind of a deal with this group,

that our net was over \$300 weekly, that on the basis of 50¢ per thousand we would only receive about \$150 from him and therefore would be out in round figures \$150 weekly. This we will work out. I think we'll come out of it even at least. He feels that he should go ahead with the printing of the supplements at Buffalo even though it's going to cost him money, but when the Lufkin plant is operating it is understood that we will make the contract with Harke-Hanks.

On Chicago Tribune printing he said that any new business they print for them we are to receive 50¢ per thousand.

I don't think we are going to have much difficulty as the result of GBP's deal with NEA and Buffalo Color Press. Most of our problems not outlined in the contractual understanding I feel can be worked out as they arise.

I think we cleaned up everything pretty well and we are pretty much agreed that the only one we might have to fear at present is Wilmington, Dela. They only have one newspaper run now and are starving for newspaper supplement printing. We will have to watch out for them. Mr. Koessler also emphasized the importance of our lining up all open new business such as Tampa, Jacksonville, New Orleans, etc., as quickly as possible. Otherwise Wilmington might be a threat.

Simply can't serve two masters. NEA is an arch enemy.
FJN:mec

3208 [P-102 for ident., P-102 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 19, 1957.

Mr. J. D. GORTATOWSKY,
Hearst Newspapers,
959 Eighth Avenue,
New York 19, New York

DEAR GORTY: Even at the risk of being repetitious I want to comment further about our readyprint business.

My suggestions and recommendations as to what I thought should be done concerning this Syndicate activity are matters of record going back five years and more. Some of the dire things that could happen have happened and there are indications that the situation can become even more serious.

I am not the least bit sanguine about the kind of a deal that can be eventually be worked out with Mr. Koessler. There is every evidence that he wants to stall as long as possible. He is sitting pretty. I think we have been too conciliatory with Koessler and it may be that is likely to be the procedure because we can only lead from weakness.

The pending contract draft leaves several matters to be attended to. One is the correction and insertion of certain lists of newspapers including, I take it, a list of our own readyprint clients. There is, too, what I regard as the all important matter of the volume to be printed for us. Whether it's 75% rather than 85% is in one respect a detail, but if we don't specify this volume as "present or current volume" it would forbid the organization perhaps from having its own plants. Putting it another way, if it should be decided to print the comic supplements of the Hearst newspapers conceivably that could be involved. Our contract with ICP specifies they are to print for us exclusively and that seems to be a bone of contention. I believe the Syndicate should have the right as stated in the contract to say whether or not other runs are to be placed in the Sylacauga plant. I also think that the printing price specified in the pending draft is too high. I seem to have evidence

that Koessler is charging some of his customers less than he would have the right to charge us, notwithstanding the fact that he is dealing with newspapers individually, whereas his arrangement with the Syndicate is on a wholesale basis involving the sum total of millions of fours. Why shouldn't the Syndicate have a favored nation price? In discussing this with Koessler I get what I think really amounts to a lot of double-talk, delaying tactics, etc.

I don't think I'm a quitter, but in view of my waning enthusiasm, I wonder whether you would care to consider having someone else conduct the negotiations with Mr. Koessler.

I don't see how the organization can gain strength in its negotiations with Koessler unless he is made to feel that he has something to fear. That fear might exist if we had a plant or two of our own. Even if it cost money to do this and diminished profits, wouldn't that be better than the eventual loss of most, if not all, of our readyprint business?

The organization has never made any capital investment in readyprinting. It has been a sales agency arrangement only and

has been yielding at the rate of a million plus each year. A newspaper property earning a million a year would be much sought after and the purchase price would probably be in the neighborhood of ten million. But, if there is any question about this cut it in two. The Syndicate which for more than a quarter of a century has been number one in the readyprint field is now at best number two, and quite helpless. Newspaper history clearly emphasizes the difficulty, in fact hopelessness of regaining a lost position. There is plenty of current evidence to substantiate this.

If Koessler, because of what he has done the past few years, were to be attacked, in my opinion he would lose, but there is the danger, I suppose, of our becoming an accessory. Here is another reason why I think that if we were in the readyprint field with plants of our own it would restore a competitive aspect and certainly that wouldn't be discouraged in Washington.

Permit me to inject an example of what we have to contend with. During the past few years the Newhouses have given me a rough time in my readyprint negotiations with them. They are getting rougher. Theodore Newhouse, who is now insisting on a reduction on the Jamaica run and perhaps Newark, uses as his principal weapon the rate charged Newhouse papers at Syracuse and St. Louis by Greater Buffalo Press. In collaborating with Mr. Koessler about this I run into all kinds of double-talk. I'm to have a meeting tomorrow with Newhouse and I've got to fight hard against going into it like a whipped dog.

3300 If you ask the question where is there a printing plant we can buy at a reasonable price. I can only say that there are undoubtedly plants available for purchase. In one case at least I know that Waterbury can be had and I believe that some time ago I advised you that the price might be a million and a half or two million. There's a plant at Wilmington, Delaware which I have often referred to. There's World Color at St. Louis. And then there's San Bernardino. But, how can the possibilities be definitely developed unless there is an inclination to want to do this very thing?

Do you suppose it would be possible to upset the Greater Buffalo Press—International Color Printing Company deal? Could either one or both of the Hearst comic supplement printing plants at Chicago and San Francisco be utilized either where

they are or at other locations perhaps eventually? What is likely to happen in Chicago if in the course of time the printing of THE AMERICAN there were to be abandoned?

This letter is quite long but the problem is big. Would you care to review some of the more detailed memoranda which I have written on this subject during the past several years?

Sincerely yours,

F. J. NICHOL.

FJN:mec
cc: F. C. McLearn

3301 [For ident., P-103 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

AUGUST 3, 1953.

MEMORANDUM ON SAN FRANCISCO AND CHICAGO COLOR PLANTS

Met last week in New York with Mr. Nicht, Mr. Burns, Mr. Padulla, business manager of American Weekly; and Oscar Bondy, production manager. Purpose of the meeting was to obtain from American Weekly prices for printing Portland Oregonian comics; also supplements for other West Coast newspapers. Price quoted by Mr. Bondy was considered by Mr. Nicht to be too high. Average for 12, 14, and 16, about \$5.50, before profit, or overhead costs.

Mr. Padulla made it clear that American Weekly people still consider operation of their printing plants a headache; that their printing costs are too high. I don't know that they are, considering the kind of work desired. So far I haven't heard any figures on their actual cost per thousand four pages papers.

Mr. Padulla expressed the belief that American Weekly would like to get rid of printing, by any of the following methods:

- (1) Turn their plants over to King Features, to be operated by King.
- (2) Turn their presses over to Hearst papers in either Chicago, San Francisco or Los Angeles, the papers to operate plants rather than American Weekly.
- (3) Sell their plants to any outsider who would then print for American Weekly.

I got the impression that the two plants are on the books of one of the Hearst companies at about \$6,000,000 and that by a mere bookkeeping twist of the wrist they would be turned over to King Features—for no payment of cash. There would still be a depreciation charge of \$120,000 yearly and King would have to take that. In one way it wouldn't be too hard to take because it could be charged against profits.

It was Mr. Padulla's idea that once owning the plants King Features could print American Weekly comics; also comics for other newspapers. It would seem that King would want a profit on the printing; therefore the cost to American Weekly would be even higher than at present. Of course if King gets the plants for nothing they might be willing to print American Weekly comics without profit; since they would then have equipment with which to print for others.

But would they be able to compete successfully for other business while using the American Weekly plants? A very big and a very important question. Unless the plants are moved the man hour rate would be the same as at present; also the manning. In fact the rate might be even higher, especially in S.F. because a commercial contract would be signed. The moving of plants would be expensive and no one could be absolutely certain as to what rates would be in another city. It would be a pretty much of a gamble.

Another factor is the lack of flexibility for the kind of work King must do. In each plant Hearst has four twelve cylinder presses. They can be operated all together or singly. Eight cylinders of each machine can be used for 16 standards. However, when printing twelves it would be necessary to double the stereotype and double register because of lack of split delivery on folders. Can split delivery be installed. Possibly, but not very easily.

When the bottom eight cylinders are used for 16 standards the top four cylinders must be idle. When fourteen pages are printed they would use the bottom eight cylinders and the top four. When 3302 two presses. Double plating again necessary. When fourteen pages are being printed the top four cylinders of each press is idle. More capacity wasted.

Mr. Bondy said the San Francisco plant can print 35,000 four pages. He was right, provided only twelves are printed. If sixteens are produced the total capacity is cut by thirty

cent and when fourteens are printed the capacity is cut still further.

It might appear that if the presses were moved the top four cylinders could be put on floor but in it so happens that presses are built in such manner that the top four cannot be moved.

Have just checked the manning tables in Chicago and I find that to run an eight cylinder press they need eight journeymen and two boys. Three more than Wilkes-Barre and four more than Buffalo.

To run twelve cylinders, for a twelve page section, Chicago needs ten men and two boys. We need eight men and four boys. Dunkirk calls for one less.

The Chicago rate per hour is \$3.00. Buffalo and Wilkes-Barre \$2.83, and Dunkirk \$2.70.

Dunkirk press crew cost about \$13.00 per press hour for journeymen. The Chicago cost is \$24.00. Wilkes-Barre Cost \$15.00.

It can readily be seen that anyone using the Chicago presses with Chicago rates and manning will have a tough time competing with Buffalo, Peoria and Wilkes-Barre, even with higher speed presses.

I am enclosing copy of letter written some time ago about S. F. and Chicago.

JOSEPH J. GORMAN.

3304 This letter is a more or less General Discussion of the San Francisco proposition. Circulation of the Hearst newspapers now printed in San Francisco is as follows:

San Francisco.....	600,000
Los Angeles.....	750,000
San Diego.....	250,000
Total	1,600,000

Since 14 page sections are usually printed, the total number of 4 page supplements in San Francisco is 5,600,000 on the average.

The total printing in Chicago is as follows:

New York	1,000,000
Boston	675,000
Pittsburgh	500,000
Baltimore	500,000
Albany	125,000
San Antonio	125,000
Milwaukee	100,000
Chicago	100,000
Detroit	125,000
Total	4,850,000

Total is four on the basis of 14 page section average 15,775,000. Total printing in four in Chicago and San Francisco plants 21,375,000.

What is the present equipment in San Francisco? Four six deck Hoe color presses geared for at least 30,000 per hour and running at 32,000 per hour. All steel cylinders, roller bearings and certainly up to date for the kind of printing Hearst Management is doing for its own newspapers.

Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing? No, they are not, for the reason that we require 4 clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom 4 to allow us to print 8 page standards, 16 page tabloids, etc.

Could the Chicago or San Francisco presses be readily adapted for our kind of work? No. They could not. It would be possible to split the sheet at the roll—extra clips could be put on the cylinders and an alternating delivery could be installed of the job of taking the two top decks down and making a separate press out of them would be almost impossible because of the present structure of the machine.

Did we rebuild Hoe pancoast six deck presses so as to use four decks and two decks separately?

Yes.

3304 Then why isn't it possible to do the same with the Chicago and San Francisco presses? Because the presses which we rebuilt have one carriage for each two decks. In other words, the presses were built in three units of two decks each. The Chicago presses are built in two units of three decks each and since four decks are necessary to print four colors it would be almost impossible to get what we want from the present machines.

Why were the Chicago and San Francisco presses so designed? I really don't know the reason for the use of only two carriages for six decks unless it is to give more head room to the men moving plates. If only 12 pages were to be printed and never 14's or 16's the present arrangement of six decks would not be too bad. However when 16's are printed, the two top decks are wasted. The same is true when 14 pages are printed. It would be impossible to print 8 page standards without double plating and printing book fold. In short, the presses are satisfactory for 12 pages and they are alright for 16's or 14's provided you don't mind wasting two top decks. But they are practically impossible for any other size sections.

How are 12 pages now printed on the Hearst presses? Each six deck press, double plates, printing one 12 page section.

How do we print 12 pages? We have one 4 deck press and one 2 deck press, combined. We use the split delivery and print either two releases at once or two papers of the same size.

Could the present Hearst presses be handled in the same manner? Yes, for 12 pages, provided split delivery is installed.

How do we print 14 pages? We run two 4 deck presses, using all cylinders.

How many rolls? One double roll and one three quarter roll.

How do the Hearst presses print 14 pages? Exactly the same as we except the two top decks on each six deck press are wasted.

What is the present total capacity of the San Francisco plant? Oscar Bondy told me that they run at 32,000 per hour, have a net running speed of 28,000 after roll changes, etc. and 23,000 after makeready and registry time. Therefore if all presses were running 12 pages (that is the only way to get full use of all cylinders) each six deck press would produce 60,000 four page sections per hour. Since there are four six deck presses, the total production would be 276,000 per hour. There are 144 hours per week but on a 7½-hour basis only 135 can be used. Therefore working 135 hours at 276,000 per hour, the four presses could produce over 30,000,000 four page sections weekly.

306 This production is based on the use of hard packing and makeready. Without hard packing or makeready, the total production could be very sharply increased. It is

quite apparent that the San Francisco plant is using only a small part of its potential capacity.

As the presses are now built, it is not likely that the total capacity should or could ever be used because you would never have all 12 page sections.

Since the Chicago plant is running three times as much as San Francisco it is obvious that much of the plant capacity is being made use of.

When I went to San Francisco during the early part of last year, it was with the idea of figuring out the cost of printing other supplements in the Hearst plant. Mr. Bondy prepared an estimate at that time which you decided was too high for King Features. He figured on every run being about 200,000 circulation.

	Circulation
Portland Journal, 16 standard.....	880,000
Portland Oregonian, Comb. Mag. & comic.....	2,400,000
San Francisco Chronicle, 16 standard.....	1,200,000
San Diego Union, 16 standard.....	480,000
Salt Lake City, 16 standard.....	500,000
Arizona Republic, 16 standard.....	400,000
Tacoma Ledger, 16 standard.....	288,000

You will note that most of the above papers are 16 standards and that is because they have standard size 8 cylinder presses. If these were to be printed on the San Francisco present machine, the two top decks would be wasted.

If Hearst general management is satisfied to waste two top decks could the present machines be used for printing the papers mentioned? Yes, after adding clips, alternating delivery and a few other things.

Could the above paper be printed in the San Francisco plant at a price which would be possible for you to sell? Mr. Bondy has already given you a price and I believe it was too high. It did include a considerable amount of depreciation and so forth which might be changed now.

Has our machinist examined Chicago presses as promised? Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible but that cost would be tremendous.

At an earlier date I agreed to estimate the cost of printing Hearst own supplements, also other supplements in the San Francisco plant. I have not done so because it would be

3306 a waste of time. This company, or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence in the efficiency in the Hearst production staff now handling the San Francisco plant.

JOSEPH J. GORMAN.

3307 [——— for ident., P-104 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 29, 1954.

Memo To: J.J.G. (Six Extras)

Copies: John Booth, Bessie, Vince, Tom Brennan, Gerry

I have gathered information relative to the Hearst printings as per your recent memos on this subject. So far as I can learn the overall situation is about as follows:

Puck—THE COMIC WEEKLY is used by twelve Hearst Sunday papers. The makeready of each is similar but not necessarily identical. Each of the papers is allowed to accept local advertising. They all run the same number of pages for a given release. Out of fourteen releases checked, thirteen were 14-page standard size sections and one was a 12-page standard size section. I understand there are occasions when they require sixteen-page standards and maybe once a year 18-pages or possibly 20-pages. In all cases, they insist that supplements be divided into two sections. Fourteen-page standards are delivered as an 8-page bookfold and a 6-page. Twelve-page standards are delivered as an 8-page bookfold and a 4-page. Nine of the papers are printed in the Chicago Color Plant and three in the San Francisco Color Plant.

THE SATURDAY HOME COMICS is USED by the Chicago American and the New York Journal American. Until very recently, Saturday Home Comic sections were printed in the Chicago Color Plant but are now being printed by the individual newspapers. As a matter of fact, I understand the New York Journal American is printing in their own plant October 17th release as their first printing.

All of the Hearst papers (in all cases when referring to Hearst papers, I am excluding the New York Mirror) use the Pictorial Review section and Pictorial Review Sections are printed for each paper in their own plant with the exception of the Pittsburgh Sun-Telegraph which we print.

In the addition to the above mentioned sections, three papers use a tabloid comic section on Sundays. These three papers are the Pittsburgh Sun-Telegraph, San Antonio Light and the Baltimore American. We print Pittsburgh and San Antonio and Baltimore prints their own tabloid comic in conjunction with [continued at pp. 1845-47]

3311 [P-105 for ident., P-105 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 20, 1959.

Mr. J. W. KOESSLER,
Greater Buffalo Press,
302 Grote Street,
Buffalo 7, New York

DEAR WALTER: In view of Mr. Nicht's dream about operating the Hearst plants in San Francisco and Chicago I thought it might be a good idea to drop in on the San Francisco plant to see how they are doing. I talked to Harold Tweet, Plant Superintendent.

Plant has two presses, twenty-four cylinders each. Only twelve cylinders are operated. Mr. Tweet told me about efforts three years ago to obtain printing of San Francisco Chronicle and Oakland Tribune, but he lost out on account of higher cost, despite fact that there would be a considerable transportation saving as against San Bernardino, also much better quality.

San Francisco is now printing for Los Angeles, San Francisco Examiner, The Seattle Post-Intelligencer—twelve pages each—rarely fourteen pages. For San Francisco they print 470,000 circulation, for Los Angeles 686,000 circulation and for Seattle 244,000 circulation, a total of about 4,200,000 four page sections.

Hard packing and makeready is used. Proofs are pulled on a proof press at the beginning of the week and two men work all week on makeready. When I was there six years ago they were using five men.

Hourly cost is about \$3.25 days and \$3.60 nights. Manning is as follows:

Five cylinders, 2 rolls of paper, 6 men.

Five cylinders, 1 roll of paper, 6 men.

Seven cylinders, 1 roll of paper, 7 men.

Seven cylinders, 2 rolls of paper, 8 men.

Eight cylinders, either 1 or 3 rolls of paper, 8 men.

Nine cylinders, either 2 or 3 rolls of paper, 9 men.

Ten cylinders, 2 rolls of paper, 9 men.

Ten cylinders, 3 rolls of paper, 10 men.

Eleven cylinders, 2 rolls of paper, 10 men.

Eleven cylinders, either 3 or 4 rolls of paper, 11 men.

Twelve cylinders, 3 rolls of paper, 11 men.

Thirteen cylinders, either 2 or 3 rolls of paper, 12 men.

Fourteen cylinders, 3 rolls of paper, 13 men.

I do not have the stereotype or mailer cost, but the manager tells me that their rates are very high and they use far more men than are necessary. All things considered, it would appear that operation of this plant would be quite a problem for Mr. Nicht or anyone else.

Perhaps you know that twelve of the forty-eight cylinders which were formerly operated in Chicago are now printing in Seattle, and they have been used to print the Color Review circulars and other sections with-color.

Regarding the San Francisco Chronicle. Back in 1956, when I was trying to get the work we agreed to print ten page standard size sections at the rate of \$5.47 per thousand and fourteen page sections at the rate of \$5.66 per thousand. We told Nicht that tens and fourteens would have to be printed in Wilkes-Barre, and the transportation cost would be greater than \$3.18 per cwt. We would print sixteen page standards in Peoria at the rate of \$5.10 per thousand four page sections.

On January 19, 1956, I wrote you a letter telling you about our negotiations for the San Francisco Chronicle, and I gave you a copy of a lengthy memorandum prepared August 3, 1953, when I visited San Francisco at Mr. Nicht's request. I have

extra copies in case you should ever want to look over the old data.

Best regards.

Sincerely yours,

JOSEPH J. GORMAN.

JJG/HLM

cc: Kenneth Koessler

Jack Koessler

P.S.—I am enclosing copy of letter written by Oscar Bondy to Johnny Padulo on June 1, 1953, which contains Bondy's figures on the cost of printing Portland Oregonian in San Francisco.

3313 [———for ident., P-106 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

MARCH 16, 1953.

Mr. FRANK NICHT,
King Features Syndicate,
235 E. 45th St.,
New York 17, New York

DEAR FRANK: When we met with Johnny Padulla and Oscar Bondy a few weeks ago, it was agreed that I would do four things:

1. Check on the possibility of adapting Chicago presses for the kind of work we are now doing.
2. Estimate cost of printing Hearst own supplements, also other supplements, in the San Francisco plant.
3. Estimate cost of printing Hearst supplements on present Hearst presses in a building located in the city where a cheaper labor rate might be obtained.
4. Estimate cost of printing Hearst supplements, also other supplements, on rebuilt presses, in a building located in a city where cheaper labor rate might be obtained.

Since we had the meeting with Johnny and Oscar I had conversation with Gene Robb about the Chicago printing. Also I had meeting with you and it was agreed that each proposition should stand on its own feet and that the Southern problem should be disposed of first.

So far as South is concerned, I have now given you all information promised Mr. Lewis except transportation cost and I expect to complete that this coming week.

Because of considerable illness in the office and also as a result of production troubles which have taken a good part of my time I have not had many hours to devote to the new plant. However, all things considered, I think I got the Southern information through pretty fast. I believe it is less than a month since we had meeting with Mr. Lewis.

This letter is a more or less general discussion of the San Francisco proposition. Circulation of the Hearst newspapers now printed in San Francisco is as follows:

San Francisco.....	600,000
Los Angeles.....	750,000
Seattle	250,000
	<hr/>
	1,600,000

Since 14 page sections are usually printed, the total number of 4 page supplements in San Francisco is 5,600,000 on the average.

3314 The total printing in Chicago is as follows:

New York.....	1,000,000
Boston.....	675,000
Pittsburgh.....	500,000
Baltimore.....	350,000
Albany.....	125,000
San Antonio.....	125,000
Milwaukee.....	250,000
Chicago.....	900,000
Detroit.....	625,000
	<hr/>
	4,550,000

Total is fours on the basis of 14 page section average 15,775,000. Total printing in fours in Chicago and San Francisco plants 21,375,000.

Because I think I can give you the information with fewer words this way, I am going to use the question and answer form. It is easier for me that way and I hope you will bear with me.

What is the present equipment in San Francisco?

Four six deck Hoe color presses geared for at least 36,000 per hour and running at 32,000 per hour. All steel cylinders, roller bearings and certainly up to date for the kind of printing Hearst management is doing for its own newspapers.

Are the Hearst presses in Chicago and San Francisco readily adaptable for our type of printing?

No, they are not, for the reason that we require 4 clips on the inside of each cylinder to take care of half plates; we require an alternating delivery and folder so double plating will be avoided; we require that the sheets be split at roll to give flexibility of roll width; and finally we require that the two top decks be separated from the bottom 4 to allow us to print 8 page standards, 16 page tabloids, etc.

Could the Chicago or San Francisco presses be readily adapted for our kind of work?

No. They could not. It would be possible to split the sheet at the roll—extra clips could be put on the cylinders and an alternating delivery could be installed of the job of taking the two top decks down and making a separate press out of them would be almost impossible because of the present structure of the machine.

Did we rebuild Hoe pancoast six deck presses so as to use four decks and two decks separately?

Yes.

Then why isn't it possible to do the same with the Chicago and San Francisco presses?

Because the presses which we rebuilt have one carriage for each two decks. In other words, the presses were built in three units of two decks each. The Chicago presses are built in two units of three decks each and since four decks are necessary to print four colors it would be almost impossible to get what we want from the present machines.

Why were the Chicago and San Francisco presses so designed?

I really don't know the reason for the use of only two carriages for six decks unless it is to give more head room to the men moving plates. If only 12 pages were to be printed and never 14's or 16's the present arrangement of six decks would not be too bad. However when 16's are printed, the two top decks are wasted. The same is true when 14 pages are printed.

It would be impossible to print 8 page standards without 3315 double plating and printing book fold. In short, the presses are satisfactory for 12 pages and they are all right for 16's or 14's provided you don't mind wasting two top decks.

But they are practically impossible for any other size sections.

How are 12 pages now printed on the Hearst presses?

Each six deck press, double plates, prints one 12 page section.

How do we print 12 pages?

We have one 4 deck press and one 2 deck press, combined.

We use the split delivery and print either two releases at once or two papers of the same size.

Could the present Hearst presses be handled in the same manner?

Yes, for 12 pages, provided split delivery is installed.

How do we print 14 pages?

We run two 4 deck presses, using all cylinders.

How many rolls?

One double roll and one three quarter roll.

How do the Hearst presses print 14 pages?

Exactly the same as we except the two top decks on each six deck press are wasted.

What is the present total capacity of the San Francisco plant?

Oscar Bondy told me that they run at 32,000 per hour, have a net running speed of 28,000 after roll changes, etc., and 23,000 after makeready and registry time. Therefore if all presses were running 12 pages (that is the only way to get full use of all cylinders) each six deck press would produce 69,000 four page sections per hour. Since there are four six deck presses, the total production would be 276,000 per hour. There are 144 hours per week but on a 7½ hour basis only 135 can be used. Therefore working 135 hours at 276,000 per hour, the four presses could produce over 30,000,000 four page sections weekly.

This production is based on the use of hard packing and makeready. Without hard packing or makeready, the total production would be very sharply increased. It is quite apparent that the San Francisco plant is using only a small part of its potential capacity.

As the presses are now built, it is not likely that the total capacity should or could ever be used because you would never have all 12 page sections.

Since the Chicago plant is running three times as much as San Francisco it is obvious that much of the plant capacity is being made use of.

When I went to San Francisco during the early part of last year, it was with the idea of figuring out the cost of printing

other supplements in the Hearst plant. Mr. Bondy prepared an estimate at that time which you decided was too high for King Features. He figured on every run being about 200,000 circulation.

3316 What large runs on the West Coast might be available for the San Francisco plant?

	Circulation
Portland Journal (16 standard)-----	880,000
Portland Oregonian (Comb. mag. & comic)-----	2,400,000
San Francisco Chronicle (16 Standard)-----	1,200,000
San Diego Union (16 standard)-----	490,000
Salt Lake City (16 standard)-----	500,000
Arizona Republic (16 standard)-----	400,000
Tacoma Ledger (16 standard)-----	288,000

6,148,000

You will note that most of the above papers are 16 standards and that is because they have standard size 8 cylinder presses. If these were to be printed on the San Francisco present machine, the two top decks would be wasted.

If Hearst general management is satisfied to waste two top decks could the present machines be used for printing the papers mentioned?

Yes, after adding clips, alternating delivery and a few other things.

Could the above papers be printed in the San Francisco plant at a price which would be possible for you to sell?

Mr. Bondy has already given you a price and I believe it was too high. It did include a considerable amount of depreciation and so forth which might be changed now.

Has our machinist examined Chicago presses as promised?

Yes, and he believes that the job of separating the two top decks from the bottom four would be practically impossible to accomplish. I guess it wouldn't be impossible but the cost would be tremendous.

At an earlier date I agreed to estimate the cost of printing Hearst own supplements, also other supplements in the San Francisco plant. I have not done so because it would be a waste of time. This company, or any other company would have the same contract as Hearst with the various unions. We would have to add our profit and King Features would have to add a profit. I do not think we could print in the San Francisco plant much cheaper than Hearst is now doing. I have full confidence

in the efficiency in the Hearst production staff now handling the San Francisco plant.

Sincerely yours,

JOSEPH J. GORMAN.

[See pp. 1848-1949 for attachment]

JJG:njb

3320 [——— for ident., P-108 in evid., H. T. Noel, Official Reporter U.S. District Court.]

cc: Mr. Govin, Mrs. Scofield, Mr. McLean, Frank Nicht, John Booth, Joe Clinton, Bessie, Vince, Tom, Gerry

JULY 19, 1954.

MR. RALPH WATT,
Coosa River Newsprint Co.,
Coosa Pines, Alabama,

DEAR MR. WATT: I think you can readily understand that before final and conclusive decision, the matter of setting up a printing plant in the new area can be made, a great number of problems must be carefully considered. I have already given much time to most of the questions which need answering and I am now convinced that arrangements can be worked out which will be beneficial to all concerned. You have the paper to sell—King Features and International Color Printing Company have the use for it. There are some perplexing details, certainly, but I hope they can be worked out. We know now approximately how much can be saved in newsprint cost. We have a good idea as to the transportation saving possible but this angle needs further study by reason of the fact that Childersburg and Coosa Pines have no passenger service and therefore no baggage express service.

We know exactly what we could save using baggage, even if we trucked into Birmingham, and we have a fair idea as to savings by using truck. We need more definite knowledge of this but not sufficiently to hold up plans.

I spent the past several days in the Coosa River area and have been in touch with many truckers about haulage to the various newspapers which we serve in the Southeastern part of the country. Our principle problem is labor cost. Since we have no accurate figure as to what labor rates might be, we have worked out a schedule of costs based on estimate and it

looks okay. Before proceeding to actually contact labor I wished to know more about living conditions, facilities for recreation, worship and education. Childersburg seems rather scattered and, as a town, might not appeal to men accustomed to living in fairly large cities. With this thought in mind, I visited Sylacauga and Talladega. I checked the time of travel between Coosa and both cities and found it requires about 20 minutes to one and 30 minutes to the other. I was most agreeably surprised by Sylacauga. It seems to have everything for comfortable living and is certainly a very pretty place. I checked personally the Churches and schools. All were very fine.

I also visited the Chamber of Commerce and had a most pleasant and beneficial visit with the manager, who happens to be first cousin to Mr. Hornady of King Features Syndicate.

For some reason Talladega did not impress us as favorably as Sylacauga. Nevertheless, I obtained full information 3321 about the place. Mr. Hornady's brother, Cecil Hornady, is owner of the newspaper and the radio station in Talladega.

Because of the outside possibility there might be complications in the idea of our union groups occupying quarters on the same grounds with your unions, or for some other reason unknown at this time, I checked with officials of both cities about buildings available. I expect to hear from them further and I have done a little advertising in the Birmingham, Talladega and Sylacauga newspapers.

I will now try to answer some of the questions you asked at meeting with Mr. Nicht and me.

ROLL SIZE—We use 29" and 58". 32 lb. basis, 40" diameter. While visiting with Mr. Wakeman the other day, we talked of the idea of testing several cars and he said he would definitely want to do that. He suggested I send in an order for two cars of our size and I wish you would consider this to be such an order. I would like to have one car of 29" rolls, 2 rolls in a single wrapper, sent to our Peoria plant, International Color Printing Company, 2305 S. Adams St., Peoria, Illinois. I wish you would send one car of 58" rolls to International Color Printing Company, 268 George Ave., Wilkes Barre, Pa., Lehigh Valley delivery. I think we should be both absolutely certain that the paper which you are now making would be fully satisfactory for a comic printers needs.

WATER—We are using very little, just for the nickel tank, showers and casting box. Mr. Wakeman pointed out that there is no water supply in the area of the mill except what you take from the river and if a printing plant is located on your property you will arrange for the water supply—and also for power. Later on I will be able to tell you more about power needs but I judge from the size of your plant there will be no question whatever about the ability to handle.

NUMBER OF EMPLOYEES—The answer to this depends on the number printed, type of presses used, etc. Of our total circulation in the South we could save transportation on about 8,000,000 four page sections weekly. In newsprint this means 200 tons. There may develop that we could increase the circulation over and above what we now estimate. When running at full capacity printing 8,000,000 four page sections weekly we would use about 70 pressmen and stereotypers, (skilled) and 80 wrappers, drivers, flyboys, (unskilled). Total about 150 men at 37½ hours per week. Naturally it would take time to build up to this point.

I have already asked Talladega and Sylcauga about living facilities. Do you suppose you could obtain similar information in Childersburg and Coosa Pines? Would like to know about schools, Churches, educational facilities, recreational points, etc.

SIZE OF BUILDING—Am not prepared to say, since I am still uncertain about layout of equipment, probably about 10,000 square feet for working space and as much more for storage. It seems to me that a printing plant even in Coosa River would need storage for the obvious reason that there is a possibility of a shutdown of paper mill and I don't believe that you have very much storage capacity.

Since our Southern business comprises all kinds of runs we have to consider flexibility of equipment and this can best be accomplished by using a number of smaller presses which can be run individually or in combination. One of the reasons I went to the Coosa area last week was to examine the layout of your mill and grounds. With us, building size or shape is not inflexible and it might be possible to work out plans so
322 as to suit the space you have available. Mr. Wakeman and I looked at ground probably about 200 yards from your main building which might be satisfactory.

TONNAGE TO VARIOUS DESTINATIONS—We are preparing a schedule to be sent to various truckers. I will forward copy to you. This schedule shows tonnage to destinations.

I repeat my statement in the first paragraph—if you have the tonnage for sale, King Features and International Color Printing Company should, unless something unforeseen develops, be able to work out plans to use it. In this regard we are most optimistic.

Thanking you for your very kind cooperation I remain
Sincerely yours,

JOSEPH J. GORMAN,

JJG:njr

3323 [-----for ident., P-100 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

JULY 10, 1934.

Joe Clinton, John Booth, Tom, Bessie, Vince, Gerry, Mr. Nicht,

Mr. B., Mrs. Scofield, Mr. Govin, Mr. McLean

Subject: Details on living conditions, recreation, educational, and worship facilities in Sylacauga and Talladega.

If the time should come when a plant is established in Coosa River it will be necessary for men and their families to live in the best possible surroundings. It is for the purpose of checking on living conditions in and around Coosa River that I spent several days in Alabama last week. The newsprint mill is located in Coosa Pines, about 4 miles from Childersburg. Childersburg is approximately 40 miles from Birmingham. Childersburg is an old Southern town which has received more or less of a boom as a result of the building of several large mills in the area but it is not what one would call a very attractive town. There are new developments going up here and there, fostered by Coosa River Newsprint Company and the North American Rayon Company and in time Childersburg may be quite a place. However, it is true that now, about 35% of the people working in the Childersburg plants live in Sylacauga, 10% in Talladega and the balance in Childersburg and surrounding small towns.

I was very much impressed by Sylacauga and I checked the mileage. It takes just about 20 minutes from the Coosa River plant to the town of Sylacauga and about 30 minutes to Talladega. The highway is very good and the surrounding country-

side very pretty. As a matter of fact, the town of Sylacauga is much prettier than the average small Southern cities. I wasn't quite as well impressed by Talladega. For your information and also for our use in the future if the time should come when it may be necessary to ask men to live in the Coosa River area, I have obtained pamphlets from the Chamber of Commerce of Sylacauga and Talladega and I am giving you a copy with this memo. Childersburg does not have a Chamber of Commerce but I have asked the Coosa River to obtain as much information for me as possible. Regarding the recruiting of men for plants in the South, I am under the impression that it was a rather costly proposition for the Coosa River people, for the reason that there were simply no paper makers in the South and most of them had to be transported from Canada at the Company's expense.

I went out of my way to talk to a number of the people who formerly lived in New England and Canada and who are now living in Sylacauga and they all seemed very happy and contented. The General Manager of the Coosa River Newsprint Company told me that of 61 families he moved from the North, only one family did not stay and that was because the mother of the family was a professional skater and she had no place to practice.

The attached pamphlets give us some idea as to the general living conditions in the two principal towns, exclusive of Birmingham, which of course is a tremendous city, and the Coosa River territory.

While I was running from one town to another in a rented car, the temperature was in the neighborhood of 105° but even the southerners were suffering and I was led to believe that the heat was most unusual. We know that at the same time Dallas was having 105° and I believe that Kansas City, Missouri, Springfield, Illinois, Springfield, Missouri, and points in Wisconsin were even hotter than the area where I was working. The temperature in Talladega is reported to be an average of 63.3° throughout the year. Summer average 79.3 and winter average 47. I don't know exactly what they mean by winter and summer, that is, which months they include to arrive at an average. I do know that practically every office and restaurant in the whole area is air conditioned. The Sylacauga Chamber of Commerce told me that the average summer temperature is

70.6° the average winter temperature is 50° and the year round average 63°. I am checking with the weather bureau in Scranton to determine how much difference there is between Pennsylvania and Alabama.

JOSEPH J. GORMAN.

3926 [-----for Abent., P-110 in eaid., H. T. Noel,
Official Reporter, U. S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,
NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS.

Phone, Wilkes-Barre 47871, August 11, 1934.

12 Color Presses—Total Capacity, 31 Million Four-Page Sections Per Week, Branch Plant, 107 South Street, Peoria, Ill., Phone, Peoria 4-3013.

MR. FRANK NIGHT,
King Features Syndicate,
233 E. 45th St.,
New York 17, New York.

DEAR FRANK, I have been studying your letter of July 26th regarding speedy work on plans for Southern plant. You said, "I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to proceed with speed, but great as my desire along this line may be I must also proceed with caution. Setting up an operation like this cannot be done over night. We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."

Now let us take each item separately. First and most important we need to be certain of the mill contract, that is, the source of supply. We know that as of May 26th the mill people were just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he has in mind, but when I called

make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on this mill thinking when you and I talk with Mr. Wakeman in New York about August 18th.

Regarding labor.—It is now common knowledge that we are thinking about the South and I am meeting Tuesday morning with Wilkes-Barre unions regarding possible transfer of work. The low men on the security list are anxious to know something about our plans so that they can make plans of their own. I have been thinking of seeing International officers and probably will do that because I don't believe we are in position to attempt an open shop, at least so close to Birmingham. One might start with an open shop but it doesn't last very long that way. I have no doubt that already members of the Wilkes-Barre unions have contacted their International officers and probably have already contacted the people in Birmingham.

Regarding press equipment.—I am sure when we were in meeting up town I told you we planned that first of all we would rebuild two four cylinder width presses which we obtained from Baltimore. This work will probably take about a year's time. We have a double width press running in Wilkes-Barre which could be moved to Birmingham after the two four cylinder presses are in operation and then we have two more single width presses which could be moved. This sort of thing cannot be done without a great deal of planning. Certainly the job could not be completed within a period of less than two or three years. We have to determine exactly what equipment we are going to use so that we will be able to tell Cousa River people what kind of space we want and what kind of building will be required. The kind of presses we use depends on the kind of work available and, as you know, our Southern work consists of mostly small runs with many plate changes.

I would like to get all of this planning behind me and before I am going to proceed just as rapidly as possible.

Regarding flexibility.—When we speak about flexibility for Press 14's we have in mind two things—flexibility of equip-

ment and also flexibility of union contracts. In Peoria we print 12's and we do print some 10's but we cannot print 14's. In Wilkes-Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract. Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4 page standards, 8 page tabloids, 8 page standards, etc., and also be prepared to make large number of plate changes. Buffalo may print one or two 8 page standards. I don't think either Buffalo or Dunkirk is printing any at this time. They are not printing any 4 page standards and the only 8 page tabloids they handle are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have, but in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts: you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past. Please be sure that I am giving every waking moment to development of plans for speedy operation in the South.

Best regards,

Sincerely yours,

JOSEPH J. GORMAN.

JJG:njr

3327 [——— For ident., P. 111 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JANUARY 24, 1933.

Memo to: Mr. Gorman, (Six Extras)

Copies: John Booth, Tom Brennan, Bessie, Vince, Roger

The following is report of trip to Georgia and Alabama made by Roger Zarbus, Tom Brennan and Joe Clinton.

Our first stop was in Atlanta, Georgia. We called on Mr. J. McHill, Jr., District Manager of Luria Engineering Company, 800 Peachtree Street, N.E., Atlanta, Georgia. Mr. McHill

works for Luria Engineering Company and is interested primarily in selling Luria building materials. This Company does not handle general contracting as such but if necessary would arrange with contractors on a sub-contract basis. If you were to want a Luria Building the normal procedure would be to buy the materials from the Luria Company for the walls and roof. Separate arrangements would have to be made with contractors for grading, foundation, electrical work, heating, etc.

We asked Mr. McMill many questions to get an idea as to price, materials, construction, etc. We told him that we were interested in a building of about 25,000 square feet of floor area. We figured on a building 80 feet wide and 320 feet long. In order to get maximum unobstructed floor area, we could get a building with an 80 foot span but for the purpose of getting maximum strength in the roof, it was decided it would be better to use two 40 foot spans with a center column. This would give the building two peaks. These buildings come in various heights, starting with an eave height of 12 feet. Going from the eave to the peak, the height of a 12 foot building goes to 16 foot clearance at the peak. A 16 foot building goes up to a center height of 23 feet and a 20 foot building to a center height of 27 feet. We have considerable literature covering specifications such as this.

The Luria people would not be interested in putting down foundation but their men would erect the building. The cost of a 12 foot eave building of corrugated 24 gauge hot dipped galvanized metal covered sides and roof would not exceed \$2.00 per square foot on our concrete. The reason we got the quotation on the 12 foot eave was because Roger thought it would be best for us to have a 2 foot concrete foundation wall above the floor to take the abuse and shock from rolls of paper, ink drums, etc. It follows that if we had a 2 foot foundation wall, we would then have a building height of 14 feet at the eave, with a center height of 21 feet. In order to house our presses, I am quite certain we need 3' per deck and if we use only four deck presses, we would need a height of 12', five deck presses 15', and if we would go to six decks we would need 18'. We will have to decide whether or not we would ever go to six decks or allow for the height in case we do. Somewhere along the line we were advised that insurance people like the sprinkler heads to be at least 3' above the contents. Another

item which we must consider is the height of the building as concerns newsprint storage. While at the Birmingham News we noticed they stored paper rolls three high, vertically. This appeared to be a very efficient way of storing newsprint because it utilized more of the area and the Birmingham News people felt they had less waste because they did not have the flat roll condition which they felt they got from storing horizontal. If we went three high, this would mean that we would need at least 15' for the roll and apparently 3' for clearance from the sprinklers. It would be well to keep this in mind—we were advised by the Butler people that their material cost is about 90¢ per square foot. It would seem there would be no additional labor cost in going from 14' to 16' and the material cost on the basis of 90¢ per square foot for material on a building, 80' by 320', would be about \$1,500 so that it would not seem to be wise to skimp on height.

We talked to the Luria representative about installation. They do not make any particular recommendation so far as the necessity for installation is concerned. He showed us a sample of the installation which they use. It was a blanket type fibre glass made by Owens-Libby Company. Cost for installation is approximately 25¢ per square foot and the number of square feet is generally figured by doubling the square footage in the floor area involved. Therefore, on a floor area square foot 3329 basis, the cost to installate would be approximately 50¢ per square foot. In a building such as we propose, we would not want to installate all of the storage area so the 50¢ would not apply for the full square footage involved.

The Luria Representative estimated the cost to air condition would be about \$1.25 per square foot of floor area. He did not think it would be necessary to air condition but if we did air condition then he advised that we should also installate.

He estimated the cost for heating, electrical work and sprinklers would be 25¢ per square foot of floor area.

In the case of air condition and heating, the cost would apply to that part actually covered and not necessarily the entire building since we would not air condition nor heat the storage area.

Regarding foundation. This man recommended a concrete floor, 4" thick, reenforced with 6 by 6 ten-gauge steel mats. For the two foot wall he recommended 8" concrete reenforced

with steel rods. To cover the cost of the floor and wall, he estimated a cost of 65¢ per square foot based on floor area.

At this point, we would have had the following cost:

Foundation -----	.65 per square foot
Building -----	2.00 per square foot
Air Conditioning -----	1.25 per square foot
Installation -----	.50 per square foot
Electrical Sprinklers -----	.25 per square foot
TOTAL -----	4.65 per square foot

Bear in mind that the air conditioning and installation and heating cost would not apply to the total floor area.

The above building cost was based on what Mr. McHill termed an ordinary complement of doors and windows and if it were necessary to add door and windows, the cost would rise proportionately. My impression was that additional doors and windows could be expensive.

We went with Mr. McHill to inspect a building which contained about 30,000 square feet of floor space. Looking at it our first thought was that it was far more space than we would ever need. The building appeared to be rugged enough and the only fault we found was the joint at the eave between the roof and the sidewalls. Both the roof material and sidewall material were corrugated. To fill in at this joint they used some kind of a mastic which was suppose to take care of the hills and valleys but daylight could be seen in many places. Mr. McHill pointed out that this was caused by insufficient maintenance and the correction could be made simply by turning down some bolts.

In addition to galvanized panels the Luria people had aluminum and corrugated asbestos which was a combination of cement and asbestos very similar apparently to Transite. For our purpose, Mr. McHill recommended that we use the corrugated asbestos for the roof and galvanized for the sides. The reason for this recommendation was because of the installing value of the corrugated asbestos. Even with asbestos they sometimes use installation but he did not think it would be necessary. For an installation such as this, he estimated a building cost of \$2.40 per square foot. To use corrugated asbestos in the roof and walls, which would give a maximum of installation, he estimated a building cost of \$2.50 per square foot. Because the metal would take a bump in the form of a dent and the corru-

gated asbestos would break, I believe Roger felt that we would not want to use asbestos on the sides.

These people did no financing and would want 20% with the order and the balance on sight draft.

Another feature of the Luria Building which Roger did not like was that the holes in the panels were drilled in the process of erection and these would not be as accurate as holes which were punched in at the factory such as is the custom with Butler Buildings. The Butler representative also pointed out that they punch the holes before galvanizing so that the hole edges are galvanized and will not rust. In the Luria Buildings, the hole edges would not be galvanized.

We told Mr. McHill we would send to him proposal for a plant and he would then give us a more accurate cost estimate.

We left Atlanta Thursday afternoon and went on to 3331 Birmingham. When we arrived in Birmingham, we went to the newspaper and spent considerable time Thursday afternoon and evening with Mr. Dave Wood, Circulation Manager, and Mr. Bob Hunter, Secretary-Treasurer of the Birmingham Newspapers. For obvious reasons they are very much interested in our locating in the South and they were very cooperative and kindly gentlemen. I am certain their friendship would continue and we could count on any assistance which the Birmingham papers might be able to offer after we have located down in their area. Mr. Bradley was out of town when we were there but from our conversations I gathered he, also, was much interested in our move.

We talked to Mr. Wood at length about the mailer's situation in Birmingham. Their rates are approximately \$88.00 for daywork and \$92.00 for nightwork—which is after 6 P.M. Their mailers are under International Mailers Union. I understand that at one time they were affiliated with I.T.U. but went over to the I.M.U. a few years ago. They work 37½ hours per week. Our impression from Mr. Wood was that they have a rather difficult time with the mailers and a good deal of the reason is because there is a located in Birmingham called "Shopping Guide". This magazine is printed in Birmingham and distributed monthly. Their mailers, that is the "Shopping Guide" mailers, are also under the jurisdiction of the I.M.U. and their scale is \$14.00 higher than the Birmingham Newspapers. The newspaper mailers strive to get up to the "Shop-

ping Guide" mailers. Mr. Wood gave us a copy of their current contract which expires this month.

In addition to the Mailers, they have a "Catch-all" Union which covers the janitors, paper handlers, and anyone who couldn't get in any other union. They have just come out of arbitration with this Union on a contract which I believe expired last March.

Rather than take a chance on getting tied in with the I.M.U., it would be my impression that we would be better off going down with the arrangement we now have with the Wilkes-Barre Paper Handlers and try to keep them under the jurisdiction of the International Printing Pressmen and Assistants 3332 Union. I understand the I.M.U. is also an A.F. of L. affiliate and if we become established with I.P.P. and A.U. a jurisdictional dispute would be very unlikely. If we went Open-Shop, our chances of being organized would be greater from the I.M.U. because of our proximity to the Birmingham mailers of the I.M.U.

We also talked to Mr. Hunter and Mr. Wood regarding our newsprint hauling setup. As we already know, they are hauling newsprint from Coosa Pines to their plant in Birmingham, a distance of 86 miles round trip. Their over-all cost runs 30¢ per mile. They use a 32 foot Pamdem tractor-trailer which carries 17 rolls of newsprint, weighing approximately 32,000 lbs. Rolls are carried in two tiers, nine on the bottom and eight on the top. This gives them a cost of 8¢ per hundredweight. They use one man on this truck. They pay this man \$6.50 per trip and he makes two trips in one day. This man has nothing to do with the loading or unloading. They have more than one truck and this man starts out by driving to Coosa Pines. The newsprint mill people load the truck with 17 rolls. The man drives the truck back to Birmingham. He doesn't wait for the trailer to be unloaded but gets another tractor and makes another trip to Coosa Pines. It takes the man one hour to drive to Coosa Pines and one and one-half hour to make the return trip. These men do not work eight hours per day and very often get in their two trips in six hours or less.

The Birmingham News has a subsidiary company which transports their paper and does their hauling. I believe they call this the Luxury Transportation Company. They cover the State of Alabama and part of Georgia. Mr. Wood indicated they

would be willing to haul for us but the trucks which do the delivering are small. However, Mr. Wood indicated they might be willing to use their newsprint trucks to haul paper for us and it might be their trucks could take a load from the newsprint mill to our location before returning to Birmingham and the operation would be economically beneficial to us and to the newspaper. Even at our peak, we estimate we would need only

twelve truck loads per week and it might be well to investigate this possibility further and thus eliminate the heavy expenditure for a tractor-trailer—particularly if we do not intend to do any supplement delivery. We asked Mr. Wood about the status of newspaper hauling in the State of Alabama and he advised they have the same exemption which applies on Interstate Commerce so that it is not necessary to have any State permit in order for a carrier to transport newspapers.

While at the newspaper, we met the various foremen and I am going to note here the name of Harry Wilson, the foreman of their Stereotype room, who offered any assistance they might be able to give. Incidentally, they have a wood registering machine and use it quite frequently since they are printing four-color ads in their daily paper. We asked him about the manpower situation and he advised while they do not have a shortage neither do they have any subs. I got the impression that the Stereotypers are getting their share of overtime in Birmingham.

On Friday morning, we contacted the Butler people and eventually met up with a Mr. Bingam, owner, and a Mr. Joe E. Brown, representative of the D. & B. Fabricating Company, General Contractors, 11 Southwest 18th Street, Birmingham, Alabama. These people are general contractors and do the work in this section of Alabama for the Butler people.—For the record their telephone number is Birmingham 58-1623 and Brown's home number is Birmingham 57-4013. We spent Friday morning with these people looking at various Butler buildings which they had erected. One building, occupied by a manufacturer of metal cans, particularly impressed us. This building contained 32,000 square feet of floor space and cost \$102,000, including foundation, electricity, heating, plumbing, and office annex. The heating setup would not be satisfactory for us but this gave us a good indication of the cost. This building seemed to be very

much larger than we would need. Mr. Brown is going to send us a copy of the floor plan of this building and we can then judge how much space we will need. Once we have a good idea as to the amount of space we will need, Mr. Brown would like to come to Wilkes-Barre and go over the plans and give us more accurate price estimate. For heating, they recommended individual univents operated by natural gas and located in particular areas. On this basis, we could use as many of the individual units as we needed at a particular time and we could add to the setup at any time. We saw some of these units in operation and it appeared to be just what would be suitable for our purpose. These people do not recommend air conditioning. As a matter of fact, they advise air conditioning will be effective only for an area of from 6' to 8' from the floor level and will not be helpful above that, so that anyone working on top of or in a press might not get enough benefits to make the cost worth while. As a matter of fact, all of the people from whom we inquired thought air conditioning would not be necessary and we did not see any plant or building which was air conditioned and this includes the Birmingham News and the Birmingham News Pressroom which was not air conditioned. They have various means of installing and they would recommend that we use aluminum on the roof and galvanized metal on the sides. We were given to understand that an aluminum roof would give an inside temperature of 15 to 20 degrees cooler in the Summer than the galvanized and would require no maintenance. The cost of aluminum is approximately 9% greater than galvanized. These people estimate an installing cost of 20¢ to 25¢ per square foot of area covered. Mr. Bingham advised that Butler material costs from 90¢ to \$1.00 per square foot to deliver the material on the ground. We expect to have the floor plan by Monday, January 24th, and as soon as Roger has a chance to make up cutouts of the various equipment, etc., so we can determine just what we need in the way of space, we should get in touch with Mr. Brown and have him come to Wilkes-Barre. We told him we would expect to be ready for him within two weeks and that we would advise him a few days before we would want him here. Mr. Brown is anxious to come to Wilkes-Barre to go into this thing further.

We favor the idea of someone like the D. & B. Fabricating Company handling the construction because they do general

contracting work and they would do the complete job from engineering to the completion of the building and they would be wholly responsible. Incidentally, the D. & B. Construction Company was sent to us by Mr. Cooper Green, of the Alabama

Power Company, and he highly recommended these 3335 people. Apparently, they have worked together—that is Mr. Green and the D. & B. Construction Company—on other projects of this sort for new plants coming into Alabama.

These buildings—the Butler Buildings—come in widths of multiples up to 40' and then in 10' multiples up to 100'. However, to get maximum transit we were advised not to go over 50' in width and use two units—getting a total width of 100'. In length the bays are 20' by whatever height is chosen starting at 12' and increasing by two foot multiples.

Both Mr. Brown and Mr. Bingham have visited the sites in Childersburg and Sylacauga which were being offered to us. Mr. Brown advised that he had checked with the sprinkler people and they had informed him there was not enough water pressure at the Childersburg site for sprinklers and we would have to put in our own pumps to maintain adequate pressure. He said this would cost us about \$20,000. I asked Mr. Waller, of the Alabama Power Company, to verify this information and he checked with the Insurance Underwriters. The information Mr. Waller wrote to us on January 10th neither confirms nor denies this allegation. This contact was with a Mr. F. M. Pierce, of the Southeastern Underwriters Association, and he advised Mr. Pierce could not give us any definite information as to whether the water pressure and supply were sufficient for the sprinkler system at any one location in either area and Mr. Pierce suggested that the Sprinkler contracting firm will make this survey, free of charge, if they are given the installation contract. This, of course, will not do us any good. We want to have this information before we give any contracts. When Mr. Brown comes to Wilkes-Barre we can, no doubt, get more definite information from him and it will be important to keep this in mind.

So far as the foundation, etc., is concerned, Mr. Bingham made the same recommendation as the Luria people. That is, 4" concrete floor reenforced with wire mesh and the foundation should be 8" reenforced with rods.

They estimate they could erect our building in eight

3336 weeks. If we give them the necessary layout, they would put in the press pits, conduit in connection with the pits, and any other special features which might have to be built into the foundation or the building itself. This was one of the reasons why we wanted Mr. Brown to come to Wilkes-Barre.

We went Sylacauga on Friday afternoon and met the Chamber of Commerce. They presented us with maps, pictures and considerable data covering three proposed plant site locations. These three locations were on the L. & N. Railroad and apparently this is the extent of the possibilities adjacent to the railroad. Site #1 is located just 13 miles from the entrance to Coosa River Newsprint Company. This site is on ground which is slightly rising and appeared to be an ideal location from the standpoint of drainage, excessibility, etc. In order to reach this site from the Coosa River Newsprint Company, it would not be necessary to go into Sylacauga proper as this location was about one block from the Birmingham-Childersburg-Sylacauga Highway and was just this side of the city limits of Sylacauga. There were no residential houses close enough to this area so that our noise would be troublesome. There is further detail on this in *The Other Sites*, the booklet given to us by the Chamber of Commerce.

Site #2 was located on the opposite side of the town and was 15 miles from the Coosa River Newsprint Company. In order to reach this location it was necessary to drive through the center of the town. This site was somewhat lower than the adjoining road and because of the additional driving time necessary would not appear to be as suitable as site #1.

Site #3 was located a few hundred yards from Site #1 but it was not within the city limits. Although the mayor and the city officials agreed to give this location fire and police protection, etc., it would not seem wise to locate in an area where they were not obligated to give service because the next city regime might not be so friendly. However, they did advise that at the next session of the legislator, if we wished, they would take necessary steps to extend the city limits to include this location. This land was also low and would not seem to

3337 be quite as suitable for our purpose as Site #1.

Of the three sites offered to us in Sylacauga, we felt that Site #1 was by far the most favorable for our purpose.

The Chamber of Commerce offered to give us, free of charge,

any one of three sites. Also, they offered to put a railroad siding into our building if we thought this would be absolutely necessary. From our conversations, I got the impression they expected to pay from \$3,000 to \$4,000 to put a siding into our plant and they would stand this expense if we deem it necessary. They hold limited options on all three locations and, naturally, they would appreciate a decision from us as soon as practical. I told them we would probably come to a decision on a plant site in about thirty days.

Regarding machinists and machine shop. There is a machine shop run by a Fred L. Conn. They gave us a list of the equipment which Mr. Conn has in his shop and, I understand, he did not have any lathe big enough to handle our cylinder. However, Roger talked to Mr. Conn and got the impression from Mr. Conn that we would have no difficulty getting machinist help which would be suitable for erection work. The machinists in this town are not union and Roger thought the only difficulty we might have would be if the Birmingham union came in and objected to our men working with the non-union men who would be available in Sylacauga. Since Alabama has the "Right To Work Law", a situation such as this might not be as critical in Birmingham as it would be in Wilkes-Barre.

So far as financing is concerned, they agreed to finance a building erected to our specifications on a ten, fifteen or twenty year basis with interest at the rate of $3\frac{1}{2}\%$. They claim they can raise the necessary funds quickly and in no case would they require more than thirty days after we give them a decision.

They offer a five year exemption on city and county taxes. Also, they offer to construct any streets or roads which would be necessary for access to the plant site. A street would be necessary for Site #3 but not for Site #1. They had figures covering principle and interest on ten, fifteen and twenty year plans at the $3\frac{1}{2}\%$ rate. According to their

figures, the cost to finance for ten years would be \$9.88 per month per thousand. For fifteen years \$7.18 per month per thousand and for twenty years, \$5.79 per month per thousand.

Mr. Green and Mr. Waller, of the Alabama Power Company, apparently spent considerable time in Sylacauga going over the sites, and advising the Chamber of Commerce on the

procedure of acquiring the sites, raising the necessary funds, etc.

There can be no doubt but that we received and could expect to receive one-hundred percent cooperation from the Chamber of Commerce and the municipal government of Sylacauga. These people were most solicitous and did everything possible to make our stay pleasant and to give us all the information we requested. They are a most civic minded group and apparently are well aware of the advantages they would receive from a weekly payroll such as we would distribute. This was evident because all of our dealings were with people who would benefit more or less directly by a new industry and particularly by one which would not be competitive to the present industries which are in business in the town.

In order to maintain their prestige with their own business people, the Chamber of Commerce in Sylacauga asked that when we do arrive at a decision we first advise the local Chamber of Commerce either in Childersburg or in Sylacauga so that they can make the announcement rather than get the information from the Birmingham Chamber of Commerce or the Birmingham newspapers. Because of the tremendous amount of effort which they have put forth compiling information for us, we agreed that whatever our decision might be we would first contact Mr. Nealeans, of the Sylacauga Chamber of Commerce.

We returned to Birmingham Friday night because we hoped to see Mr. Cooper Green Saturday morning and we made arrangements to meet again with the Sylacauga Chamber of Commerce on Saturday afternoon.

Saturday morning, we called Mr. Green but he was out of town and his assistant, Mr. J. C. Waller, was waiting for us. He returned with us to Sylacauga and spent all day Saturday and Saturday night with us.

We spent Saturday looking over the city and its facilities, checking machine shops, housing, living conditions, etc.

Sylacauga has a paid Fire Department consisting of two companies. They had three trucks which appeared to be very new and in good condition and a fourth truck which was old. When I visited the Engine House there were about six men on duty. Because Childersburg does not have a paid Fire Company but only a paid driver at this time, it would be well to

check with Mr. Green to get all of the information we can on insurance rates and coverage costs for us. The Sylacauga people have given us this information in a general way but we can probably find out exactly what the difference amounts to. Of course, the difference in insurance rates is not nearly so important to us as the actual difference in the risk involved. We are more interested in the actual protection than the insurance coverage and apparently there is no comparison between Childersburg and Sylacauga in this respect at this particular time.

We spent Saturday and Sunday in Sylacauga and devoted considerable time to looking over the town and its facilities, such as hospitals, recreation, churches, schools, etc. From a living standpoint there is little to compare between Childersburg and Sylacauga. However, the highway from Childersburg to Sylacauga is excellent and would not be much of a hardship for an employee to drive the twelve miles distance between the two towns, if we should locate the plant in Childersburg and the employees wish to live in Sylacauga. Because of the vast difference in the living conditions, no doubt the majority of the employees would want to live in Sylacauga. It is very likely that housing is going to be one of our big problems. We pretty well covered both towns and found very, very few houses for sale and none for rent. At least at this particular time there were no houses for rent and only a few apartments in Sylacauga. There is considerable building going on in both towns. There are very few used houses for sale and it would appear that anyone going into the area to live would almost be compelled to build a house before moving. Houses, now being built, cost from \$9,500 on up and a house at this price seems to be a minimum. We saw very few houses costing less than \$13,000 to build and many of them in the \$16,000 to \$18,000 class.

3340 Practically all of the houses are one story affairs and do not have cellars, attics or garages. They have either floor furnaces or piped hot air which are heated by natural gas. There seems to be one major building contractor in Sylacauga—that is for residential buildings,—and at present he has 27 houses under construction and 15 sold but not started. We spent considerable time with him on Sunday—his name was Bill Whetstone. He told me he ordinarily finishes a house in four months but could step this up if necessary. Their building costs are based roughly on an average of \$8.00 to \$10.00

per square foot of floor space for living area and \$2.50 to \$4.00 per square foot for storage area—such as car port, etc. The \$8.00 per square foot cost is the minimum to meet F.H.A. specifications.

There were two apartment units in Sylacauga and both had some vacancies. The rents ranged from \$42.50 for one bedroom to \$57.00 for three bedrooms. Apparently, apartment dwelling is not very popular and very likely this is because of the heat. Taxes by our standings are very reasonable. They told us that taxes on a \$15,000 house runs not more than \$36.00 per year.

Sylacauga houses can be furnished on the F.H.A. or the V.A. plan. To purchase a house which sells for \$13,300, a veteran would need a down payment of \$665 and an F.H.A. borrower would need a down payment of \$1,500. Monthly payments, on a twenty-five year plan, would then run about \$75.00 covering principle, interest, taxes and insurance.

On Monday morning, Mr. Waller, of the Power Company, met us in Sylacauga and we called on Mr. Watt and Mr. Wakeman at the newsprint mill. While at the Birmingham paper, Tom suggested they might be able to get the Coosa River newsprint without wrapper and Mr. Turner, who had previously complained about the cost of Canadian wrapper, indicated they could probably try some Coosa River newsprint without a wrapper. Tom then suggested to Mr. Watt the possibility of us getting paper without a wrapper and Mr. Watt thought this could be arranged since they do not manufacture their wrapper and must purchase it from the outside.

With Messrs. Wakeman, Watt, Bachelder and Cleckler, we visited the two sites in Childersburg. Both sites seemed to be very suitable from a building standpoint. Mr. Cleckler and Mr. Bachelder advised the town's people were prepared to do anything in order to get us into Childersburg. The one site—the one closest to the Mill—did not have sewage and it would be necessary to put in a septic tank. The other site—the one closest to the town—could have city sewage, water and natural gas. Mr. Cleckler told us that we could have as much property as we wanted of the first site up to perhaps ten acres, free of charge. This offer was made by the owner of this land or someone speaking for the owner. The Second Site is the four acre plot which was offered to us origi-

nally at \$900.00 per acre. Mr. Cleckler advised that they would arrange to raise the money to finance the plant.

Mr. Wakeman was insistant that we go to Talladega and look at a building which was being offered for sale by a George Jones Realty Company. It seems Mr. Jones is an influence in county politics and he contacted Mr. Wakeman about the possibility of our plant being located in Talladega and he particularly wanted us to look at a building which had been formerly occupied by the Palm Beach Clothing Company. This building contained 75,000 square feet of floor space and obviously would not be suitable for us but in order to appease Mr. Wakeman—who stressed the importance of Talladega in the county political setup and more particularly Mr. Jones—we did go to Talladega Monday afternoon with Mr. Waller of the Power Company. We visited Mr. Jones and the plant mentioned above. This plant was for sale at \$2.00 per square foot but would not have been for us. Mr. Jones showed us other buildings but none which were close to filling our needs.

While at this Palm Beach plant, we were advised by the people who ran this operation they had several hundred lockers for sale and we might keep this in mind for some future time.

We returned to the Newsprint Mill on Monday afternoon and with Mr. Waller and Mr. Watt went to Birmingham to meet Mr. Green. We spent Monday evening with these three men. We asked Mr. Waller and Mr. Green to get us informa-

tion about the water pressure in the two towns. Mr. Green wanted to know if we were satisfied with the sites, financial arrangements, etc. in Sylacauga. He was familiar with the sites and arrangements. He told us he visited the business in Sylacauga in order to get their attitude toward the possibility of our establishing a plant and he recommended they write letters of greeting which the Sylacauga Chamber of Commerce have had prepared for us. I told Mr. Green you were very appreciative of his efforts in our behalf and that you would be grateful if he would give us an off-the-record opinion as to where he thought we ought to locate. Mr. Green did not want to be quoted but he thought if we could handle the newsprint hauling angle without a prohibitive cost, we would be better off locating in Sylacauga than we would in Childersburg. He said he would be influenced by the facilities of the town.

from a business standpoint and also from a living standpoint for the employees. He felt that the people of Childersburg—particularly Cleckler—could not raise the necessary funds to finance the building on their own and that they would have to go out of town in order to finance. He thought that if they did have to go out of town that they would not be able to finance for us at the rate of interest which the Sylacauga people were going to charge—that is $3\frac{1}{2}\%$. As a matter of fact, he said we would probably have to pay $4\frac{1}{2}\%$ or 5% if we do go into Childersburg.

Since we returned from Alabama, we have received a letter from the Sylacauga Chamber of Commerce, dated January 22nd, in which they correct some insurance information they gave to us originally and which is contained in the book of information which I have turned over to you. I am having copies made of this letter and it would probably be well to put one copy in the book so that there will be no mixup later on.

We have also received from the Alabama Power Company a copy of a "Tentative Agreement" which would cover the initial stages of the negotiations with the people who are going to finance the building, whoever they might be. This "Tentative Agreement" is something which would come before
3343 a formal lease. I thought they were also going to send us a copy of a typical lease covering similar circumstances but they have not done this. It might be well to write to Mr. Green and request something along this line at least so that we will have an idea as to the normal procedure.

JOE CLINTON.

MM

3344 [———for ident., P-112 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 5, 1955.

Memo To: Mr. Gorman, (Seven Extras).

Copies: John Booth, Bessie, Vince, Gerry, Don and Ray, Tom Brennan.

In lengthy memo dated March 22nd concerning South Administration General, you asked that I work on exactly what we will be able to print in the South to determine how much news-print we can use in 1956.

Attached is one set of schedules showing the different 8-page runs which we might print in the South next year listed according to the group to which they belong, including a group of special makeready runs which could be taken singly. I have figured that we would start out with the special makeready 8-page standard and add enough special makeready 8-page standards until certain we are running right before going into any group printings.

The second schedule shows the press and newsprint requirements for the year 1956. This schedule shows what we will run with 410, what we will run after we add 717 and what we will run after we add 505. This schedule also shows the weekly newsprint requirements using one, two and then three presses. You will note I have figured we will use one press for January and February, two presses for March and April and three presses from May through December. I realize we plan on having the presses in operation before the dates I show. However, we will have to start out slowly and probably will not work the presses to capacity for some time. At any rate, I thought it safer to use these figures but they can be adjusted. You will note the Total Yearly Newsprint Requirements is 5,200 tons. As against the contract calls for 2,500 tons for 1956 but Mr. Watt, in his letter of February 24th, advised they would be able to give us newsprint before mid-1956 and therefore, would be able to give us more 2,500 tons in that year. We will have to decide how far we want to go towards 5,200 tons and then see what we can get from the mill. The jump from 2,500 tons in 1956 to 8,000 tons in 1957 is not good in that we need only two single-width presses in the one year but we need three single-width and a double-width the following year. What we can get from

3345 the Mill in 1956 is most important at this time.

JOE CLINTON

MM

[See pp. 1851-1853 for attachment]

3340 [— for ident., P 113 in exhibit, H. T. Noel, Official Reporter, U.S. District Court.]

MAY 15, 1955.

Mr. R. O. STRONNBERG,
The Hearst Corporation,
360 Eighth Avenue,
New York, New York.

DEAR BOB: Thanks very much for your letter of May 11th about the paper situation. As you can readily understand, it is difficult for us to state absolutely that we will have a press ready at a certain time next year but we are counting on getting one press ready about March, another in May and a third in July. Watt will have no paper until July 1st and then he will have 2,500 tons for us after that for the remainder of 1956. If we run three presses through the second half of 1956, we will use up to 150 tons per week or close to 4,000 tons in the second half. We are somewhat concerned about the period from March to July and it has occurred to us, and I have broached the idea to Mr. Watt, that if we have a press or two ready between April and July, we might be able to switch tonnage, for instance, you might be able to give some International Paper to St. Louis or Kansas City instead of to us and Watt would give us what we had intended for St. Louis or Kansas City. We are fairly certain that we will have one press ready in March and three presses by July 1st, and we are fairly certain that we would need about 4,000 tons between July 1st and January 1st, 1957 but, as I said before, we cannot be absolutely certain about when the presses will be ready.

Best regards,

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.,
JOSEPH J. GORMAN.

MM

Copy: Frank J. Nicht, King Features Syndicate; John Booth, Joe Clinton, Bessie, Tom Brennan, Vince, Newsprint File, Southern File, Hearst Corporation.

33500 [——— for ident., P 114 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

Copies: John Booth, Joe Clinton, Tom Brennan, Vince
Hessle.

JUNE 3, 1933

MR. JACK NEALEAND, *Secretary,*
Chamber of Commerce,
Sylvauga, Alabama.

DEAR JACK: I suppose it seems that we are somewhat dilatory in our move to give you a statement regarding location in Sylvauga but actually there are many things involved which are difficult to fully explain to persons not familiar with the newspaper readyprint situation. Confidentially, we are going to Sylvauga. We may not be able to give you a full statement for the public by June 7th for the reason that it is necessary for King Features Syndicate to clear up certain contractual matters with newspapers beforehand. I have every hope that I will be able to contact you definitely by June 7th but if not I wish to confirm what I said in previous letter that you should purchase the land. Also, as per our telegram of this date, please proceed with the grading in accordance with our understanding that the road will be lowered so that at no point will the roadway be more than from 3 1/2 to 4 feet higher than the industrial site.

I wish to impress upon you that this is a very responsible company and King Features Syndicate is fully responsible as just between the Sylvauga Chamber of Commerce and International Color Printing Company I can confidentially state that we are going to locate in Sylvauga and if I cannot give you a full statement by June 7th, it is a delay which simply cannot be avoided.

Best regards,

Sincerely yours,

INTERNATIONAL COLOR PRINTING CO.
JOSEPH J. GORMAN

JJG:MM

3551. [— for ident., P-115 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,

Newspaper Comic and Magazine Supplements,

208 George Avenue, Wilkes-Barre, Pa.

Phone, Wilkes-Barre VA 4-7871, September 27, 1955

10 Color Presses, Total Capacity 40 Million Four Page Sections
Per Week, Branch Plant, 105 South Street, Peoria, Ill.

Phone, Peoria 4-6013

Mr. FRANK NICHT,

King Features Syndicate,

236 East 40th Street,

New York 17, New York

DEAR FRANK: Regarding the announcement made in Sylva-
cough by me. It was primarily intended for Sylva-cough consump-
tion and I made it clear at that time that we had chosen
Sylva-cough as the site of the Southern plant and would build a
plant there "provided final financial and building plans can be
eventually agreed upon."

In my talk to the people Sylva-cough I emphasized fact that
they would have to sell lands in the amount which would give
us a satisfactory building and they would also have to give us
a lease which would be satisfactory. We are committed to
Sylva-cough provided our conditions are met, but before we agree
to sign lease we must know that people of Sylva-cough will give
us the kind of building we want, and they cannot do anything
about this until after our building plans have been completed
and bids received. Actually I don't think there should be too
great a hurry about publicizing generally our Southern plans.
I mean that we should not put too much publicity in Editor &
Publisher, newspapers and other publications. Certainly there
seems no reason why you should not contact all of the news-
papers involved and notify them that you are the selling agent
for International Color Printing Company and that when a
Southern plant is finally established, all sales for work produced
by International Color Printing Company will be in the hands
of King Features Syndicate.

I just want you to know that no final papers have been signed for a Sylacauga plant and none can be signed until after building plans have been completed and lease terms agreed upon.

Best regards.

Sincerely yours,

J. J. Gorman.
JOSEPH J. GORMAN.

JJG/hlm

3352 [——— for ident., P-118 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

JUNE 26, 1956.

Mr. CECIL WALDROP, *Chairman,*
Industrial Development Board of the City of Sylacauga, Inc.
c/o Chamber of Commerce,
Sylacauga, Alabama.

DEAR MR. WALDROP: At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans and subsequent meetings held in Sylacauga, we were offered as a gift from the Citizens of Sylacauga a clear title deed to a 3.64 acre plot of ground located at 908-934 West Fort William as now graded with agreed upon power, gas, water and sewage facilities available upon this property.

In consideration for the gift of land we agree to proceed within 90 days, or as soon thereafter as possible, to put up a plant building of approximately 45,000 square feet and generally the same as the D & B drawings and specifications of which you have copies at our own expense and by means of our own financing. We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least 100 people.

We trust that this agreement will meet with the requirements of your Board and your Citizens and that you will have the deed made out and mailed to us as soon as possible.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.,
JOSEPH J. GORMAN, *President.*

JJG:MM

CC—JW B—JC—Tom B

3353 [— for ident., P-118A in evid., H. T. Noel, Official Reporter, U.S. District Court.]

JUNE 26, 1956.

Mr. CECIL WALDROP, *Chairman,*
Industrial Development Board of the City of Sylacauga, Inc.,
c/o Chamber of Commerce,
Sylacauga, Alabama.

DEAR MR. WALDROP: Supplementing our letter of June 26th, concerning the plot of ground situated at 908-934 West Fort William which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our Parent Company. The Greater Buffalo Press, Inc., Buffalo, N.Y. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary. The International Color Printing Company, for the operation of the printing business which will be in the name of the International Color Printing Company.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.,
 JOSEPH J. GORMAN, *President.*

JG:MM

CC—JW B—JC Tom B

JUNE 18, 1956.

Memo to Mr. Gorman (3 extras).

CC:JW B—Tom B—Vince—Bessie.

Following is a copy of letter agreed upon between Nealeans and Howard in Sylacauga, Tuesday, June 12th. It is my understanding that the purpose of this letter is that they wish to use it as the basis for soliciting the additional \$16,000 or \$18,000. Which they require for the additional land and grading. In order not to complicate the thing on a local level we decided it would be better to write a supplementary letter advising that title will be held and building owned by Greater Buffalo Press and that deed should be made out accordingly. This is the reason for the second letter. The first letter would be about as follows:

"At the last meeting of negotiations which were held in Wilkes-Barre with your representative Mayor Ed J. Howard and Jack Nealeans and subsequent meetings held in Sylacauga, we were offered as a gift from the Citizens of Sylacauga a clear title deed to a 3.64 Acre Plot of ground located at 908-934 West

Fort William as now graded with agreed upon power, gas, water and sewage facilities available upon this property."

"In consideration for the gift of land we agree to proceed within 90 days, or as soon thereafter as possible, to put up a plant building of approximately 45,000 square feet and generally the same as the D. & B. drawings and specifications of which you have copies at our own expense and by means of our own financing. We will use said site and building to operate a color printing establishment which we expect will give steady employment to at least or approximately 100 people."

"We trust that this agreement will meet with the requirements of your Board and your Citizens and that you will have the deed made out and mailed to us as soon as possible."

Following is copy of what would be the supplementary letter:

"Supplementing our letter of ——— concerning the plot of ground situate at 908-934 West Fort William which you are giving to us and upon which we propose to build our printing plant, be advised that we wish title to be made in the name of our Parent Company, The Greater Buffalo Press, Inc., Buffalo, N.Y. The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which will be in the name of the International Color Printing Company.

Sincerely yours,

3355 (#2 Memo to Mr. Gorman.) (JUNE 18, 1956.)

The foregoing are suggested forms and I think can be altered as necessary.

I also thought of the possibility of International Color Printing Company taking title to the land and at some later date deeding it over to Greater Buffalo Press.

JOSEPH CLINTON.

MDL.

3356 [—— for ident., P-119 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING Co.,
Newspaper Comic and Magazine Supplements,
 268 George Avenue, Wilkes-Barre, Pa.,
 Phone, Wilkes-Barre VA 4-7871, July 2, 1957.
 19 Color Presses, Total Capacity 40 Million, Four-Page Sections
 Per Week, Branch Plant, 107 South Street, Peoria, Ill.,
 Phone, Peoria 4-3013

Mr. WALTER KOESSLER,
 Greater Buffalo Press, Inc.,
 302 Grote St.,
 Buffalo, N.Y.

DEAR WALTER: This is to bring you up-to-date on Press 2022 for the South. As you know it has been erected for a number of months past. One folder is completed including split delivery. The other folder is completed with the exception of a new collecting cylinder. Reels have been rebuilt, erected and ready for attachment with the exception of electrical work. Impression cylinders have been turned down and altered for 5 plate wide operation. Nothing has been done on the plate cylinders although we have received from you the rings and clips and expect to pay for them this month.

We have been working on the lights and other minor items and any day now we will start working on the plate cylinders. We could probably, by pushing, get this press ready in 3 or 4 months. This press carried with it a 100 h.p. motor and controllers practically new.

One of these days we will review our stereotype machinery and list what we have on hand in Wilkes-Barre and you can figure on the additional material which might be needed from Buffalo.

Very truly yours,

Joe,
 JOSEPH J. GORMAN.

JJG/rb
 CC: K.K. W.H.

3357 [——— for ident., P-120 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

CC: Gerry, John Booth, Joe Clinton, Tom, Bessie, 4 ex.

AUGUST 11, 1954.

Mr. FRANK NICHT,
King Features Syndicate,
235 E. 45th St.,
New York 17, New York

DEAR FRANK: I have been studying your letter of July 26th regarding speedy work on plans for Southern plant. You said, "I am anxious to be in a position to go ahead with our part of the program which, of course, involves client relations and sales. I suppose the first thing necessary is to feel sure that we have a deal with some mill. I presume that if you decide it would be best to have the plant next to or nearby a mill that the mill wouldn't make an arrangement with any other supplement printer. Like you I would like to proceed with speed, but great as my desire along this line may be I must also proceed with caution. Setting up an operation like this cannot be done over night. We have to decide what type presses are needed, what arrangements can be made with unions, which transportation companies and last but not least what arrangements can be made with mill."

Now let us take each item separately. First and most important we need to be certain of the mill contract, that is, the source of supply. We know that as of May 26th the mill people was just as anxious to sell to us as we were to buy. I haven't noticed any change in attitude since. I had hoped to get to Birmingham this week, just for general conversation with Mr. Watt about what terms he has in mind, but when I called to make the date he had a previous engagement in Florida. I suppose that Mr. Watt may be somewhat surprised when he learns that International Color Printing Company and King Features are not one and the same, and then again he may not be surprised. Certainly he and the other directors will want to know that if they make a contract with us it will be practically the same as making it with King. Perhaps we will get some line on the mill thinking when you and I talk with Mr. Wakeman in New York about August 18th.

Regarding labor. It is now common knowledge that we are thinking about the South and I am meeting Tuesday morning

with Wilkes Barre unions regarding possible transfer of work. The low men on the seniority list are anxious to know something about our plans so that they can make plans of their own. I have been thinking of seeing International officers and probably will do that because I don't believe we are in position to attempt an open shop, at least so close to Birmingham. One might start with an open shop but it doesn't last very long that way. I have no doubt that already members of the Wilkes Barre unions have contacted their International officers and probably have already contacted the people in Birmingham.

3358 Regarding press equipment—I am sure when we were in meeting up town I told you we planned that first of all we would rebuild two four cylinder width presses which we obtained from Baltimore. This work will probably take about a years time. We have a double width press running in Wilkes-Barre which could be moved to Birmingham after the two four cylinder presses are in operation and then we have two more single width presses which could be moved. This sort of thing cannot be done without a great deal of planning. Certainly the job could not be completed within a period of less than two or three years. We have to determine exactly what equipment we are going to use so that we will be able to tell Coosa River people what kind of space we want and what kind of building will be required. The kind of presses we use depends on the kind of work available and, as you know, our Southern work consists of mostly small runs with many plate changes.

I would like to get all of this planning behind me and therefore I am going to proceed just as rapidly as possible.

Regarding flexibility—When we speak about flexibility for 10's and 14's we have in mind two things—flexibility of equipment and also flexibility of union contracts. In Peoria we do print 12's and we do print some 10's but we cannot print 14's. In Wilkes-Barre we are now printing 10's, 12's, 14's and 20's so it is not a case so much of flexibility of equipment as flexibility of contract. Also, you must keep this in mind and you must believe me, it is most important that we be able to print 4 page standards, 8 page tabloids, 8 page standards, etc., and also be prepared to make large number of plate changes. Buffalo may print one or two 8 page standards. I don't think either Buffalo or Dunkirk is printing any at this time. They are not printing any 4 page standards and the only 8 page tabloids they handle

are those which fit together with a few plate changes. Therefore, we apparently have flexibility for certain things that Buffalo does not have, but in the long run there is no doubt that Buffalo has greater flexibility of contract and probably greater flexibility otherwise. We are doing the best we can with what we have to work with and with the kind of profit that we are able to make. We are keeping in mind these facts: you are anxious to get started as soon as possible for psychological reasons as well as for reasons of safety. You want to get the greatest flexibility possible. We want to do both things and we also want to work out a contract which will put us in better shape to do these things than we have been in the past. Please be sure that I am giving every waking moment to development of plans for speedy operation in the South.

Best regards.

Sincerely yours,

JOSEPH J. GORMAN

JJG:njr

3350 [———for Ident., P-121 in Evid., H. T. Noel, Official Reporter, U.S. District Court.]

November 7, 1955

Memo to: JOHN BOOTH

cc: JOE CLINTON, TOM BRENNAN, BESSIE, NEWSPRINT GENERAL—INVENTORY, NEWSPRINT GENERAL—PRICES

Have just heard from Bob Sternberger and he said that there will probably be an increase in Murray Bay price but he doesn't know how much or when. Regarding the letter which I wrote to him the other day he said he would have to give my questions some more thought. Regarding Coosa River contract they have suggested that we increase the period for another four years that is from 1955 to 1969. I have agreed to that. Hearst Enterprises will prepare a contract to sell Coosa River Newsprint to us under the same terms as now exist in contract between Coosa River and Hearst Enterprises.

JOSEPH J. GORMAN.

hlm

cc: Miss Elswit file, F. J. Nicht file, South file, Hearst Enterprises file.

3360 [——— for ident., P-122 in evid., H. T. Noel, Official Reporter, U.S. District Court]

INTERNATIONAL COLOR PRINTING CO.,
 NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,
 Phone, Wilkes-Barre VA 4-7871,
 268 George Avenue, Wilkes-Barre, Pa., April 11, 1955.

19 Color Presses. Total Capacity 40 Million Four-Page Sections Per Week. Branch Plant, 107 South Street, Peoria, Ill., Phone, Peoria 4-3013.

MR. FRANK NICHT.
 King Features Syndicate,
 235 East 45th Street,
 New York 17, New York.

Dear Frank: Since you are going to meet with Mr. Watt next week it has occurred to me that it would be a good idea for you to have some up-to-date information on probable newsprint requirements in 1956 and 1957. I believe your contract calls for approximately 2,500 tons in the year 1956 and then 8,000 tons in 1957. I am sending you a schedule marked "A" showing the different 8-page runs which we might print in the South next year, listed according to the group to which they belong, including a group of special makeready runs which could be taken singly. We estimate that we could start out with the special makeready 8-page standards and add enough special makeready 8-page standards until certain we are running right before going into what we might call the odd size runs such as 12 pages. There will be no 14-page printings in 1956. Schedule "B" shows the larger runs, which we would take on after we get going on the smaller ones. Schedule "B" also shows complete requirements for 1956, these requirements being based on the presses which we expect to have ready in the year 1956. You will note that the total yearly newspaper requirements are 5,266 tons as against the contract which calls for 2,500 tons but Mr. Watt, in his letter of February 24th, advised they would be able to give us newsprint before mid 1956, and therefore would be able to give us more than the 2,500 tons called for in that year. We will have to decide how far we want to go towards 5,266 tons and then see what additional we can get from the mill. In order to print 8,000 tons in 1957, it is necessary that we have installed in that year presses over and above those which we anticipate completing before the end of 1956.

Here is a brief review of what we are doing along mechanical lines right now. As you are fully aware we have two plants in Wilkes-Barre which we call the Parsons and the Sheldon plants. The Parsons was the original plant. It now contains five single-width presses. In our Sheldon plant we have five double-width presses and one single-width press.

We are planning to move from the Parsons plant to the South three single-width presses. On these three single-width presses we now print quite a large number of 12-page standard size runs. Before they can be moved from the Parsons plant it is necessary that we increase our capacity for 12-page runs at the Sheldon. Therefore we are now installing at the Sheldon an additional single-width press which will be run in connection with one of our double-width presses. We anticipate this press will be ready about June 1st. After we increase our 12-page capacity at the Sheldon—about June 1st, we will start moving our stereotype equipment from the Parsons plant to the Sheldon plant. We now have stereotype equipment in both plants but not enough and it is necessary that we combine at the Sheldon in order to get full capacity. We anticipate the stereotype job will be finished about July 1st and then we will start moving two single-width presses from Parsons to the Sheldon. This should be done by about September 15th. After we have completed movement of the two single-width Hoe presses to the Sheldon we will then be in a position to start moving the Goss presses to the South, provided building is ready at that time. As you already know we have long ago fully considered the sites in the Coosa River area, we have made arrangements with the Sylacauga Chamber of Commerce, we have plans drawn up for building—about 30,000 square feet, as against a much larger building which Greater Effalo is planning to erect at Lufkin, but we cannot proceed with purchase of ground in Sylacauga nor with the letting of contract for building there until we have concluded arrangements with you for the signing of a long term contract which will continue dividends to the owners as well as guarantee amortization of cost of new plant within a reasonable period. As you can well understand no bank is interested in advancing money except on the basis of a sure return of same.

The purpose of this letter is not so much to discuss contract as to keep you advised as to what progress we are making. Will

1573

write further, probably Tuesday or Wednesday, about other features which I do not have time to discuss at this writing.

Best regards.

Sincerely yours,

J. J. Gorman

JOSEPH J. GORMAN.

JJG/HLM

Enc.

3362 [—] for ident., P-123 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

APRIL 22, 1955.

MR. JACK NEALEANS, *Secretary,*
Chamber of Commerce,
Sylacauga, Alabama,

Dear Jack: I am writing this following our telephone conversation of this morning when I told you that we had definitely selected Sylacauga as the location for our Southern printing plant and that you should go ahead with the purchase of Site No. 1. I told you that we wished to keep the matter confidential until such time as we can clear statement with King Features Syndicate and you advised that you might find it necessary, in view of this fact, to get an extension of the option for another two weeks or thirty days. I wish to emphasize, however, that we do not desire to take a chance on losing the site. In other words, we want the matter held as confidentially as possible until such time as we can clear through King Features but this is definitely your authority to go ahead on our behalf with the purchase of the site we selected.

Best regards.

Sincerely yours,

INTERNATIONAL COLOR PRINTING Co.
JOSEPH J. GORMAN.

JJG:MM

3368 [——— P-126 for ident., P-126 in evid., H. T. Noel,
Official Reporter, U.S. District Court.]

**CERTIFICATE OF INCORPORATION OF DIXIE COLOR
PRINTING CORPORATION**

To the HONORABLE JUDGE OF PROBATE, TALLADEGA COUNTY,
ALABAMA:

The undersigned, Joseph J. Gorman, John Walter Koessler, Kenneth L. Koessler, William J. Hammond, and Joseph T. Clinton file this Certificate of Incorporation for the purpose of printing, binding, publishing, circulating, distributing, buying, selling, and dealing in books, pamphlets, circulars, posters, newspapers, magazines, literature, pictures, tickets, cards, advertisements, letter and bill heads, envelopes, legal, commercial and financial forms and bulletins of every kind and character, and to that end do hereby make and subscribe our names to this Certificate.

ARTICLE I

Name

The name of the corporation shall be
DIXIE COLOR PRINTING CORPORATION

ARTICLE II

Objects

The objects for which the corporation is formed are:

(a) To print, bind, publish, circulate, distribute, buy, sell and deal in books, pamphlets, circulars, posters, newspapers, magazines, literature, pictures, tickets, cards, advertisements, letter and bill heads, envelopes, legal, commercial and financial forms and bulletins of every kind.

(b) To acquire by purchase or otherwise turn to account, license the use of, assign and deal with copyrights and intellectual property of every kind.

(c) To carry on a general printing, engraving, lithographing, electrotyping and publishing business in all the branches thereof.

(d) To manufacture, buy and sell, and generally trade in, machinery, equipment, devices and supplies used or usable by printers and lithographers.

(e) To acquire all real property and equipment necessary or usable in the conduct of such business.

(f) The corporation desires to do business in and all the Counties and municipalities in the State of Alabama and any other States or foreign countries where it might quality to do business.

3369

ARTICLE III

Principal Office

The location of its principal office in the State of Alabama shall be Sylacauga, Alabama.

ARTICLE IV

Capital Stock

The amount of the total authorized capital stock shall be \$100,000.00 divided into 100,000 shares having a par value of \$1.00 each. The amount of capital stock with which the corporation will begin business shall be \$50,000.00.

ARTICLE V

Agent

The name and post office address of the agent authorized by the incorporators to receive subscriptions to the capital stock is Joseph T. Clinton, Wilkes-Barre, Pennsylvania.

ARTICLE VI

Incorporators and Officers

(a) The names and post office addresses of the incorporators and the number of shares subscribed for by each are as follows:

	<i>Shares</i>
Joseph J. Gorman, Wilkes-Barre, Pa.....	10,000
John Walter Koessler, Buffalo, New York.....	10,000
Kenneth L. Koessler, Buffalo, New York.....	10,000
William J. Hammond, Buffalo, New York.....	10,000
Joseph T. Clinton, Wilkes-Barre, Pa.....	10,000

(b) The names and post office addresses of the officers chosen for the first year are as follows:

Joseph J. Gorman, Wilkes-Barre, Pa., President
 John Walter Koessler, Buffalo, New York, Vice-President
 Kenneth L. Koessler, Buffalo, New York, Secretary
 Joseph T. Clinton, Wilkes-Barre, Pa., Asst. Secretary
 William J. Hammond, Buffalo, New York, Treasurer

- 3370 (c) The names and post office addresses of the Board of Directors chosen for the first year are as follows:
 Joseph J. Gorman, Wilkes-Barre, Pa.
 John Walter Koessler, Buffalo, New York
 Kenneth L. Koessler, Buffalo, New York
 William J. Hammond, Buffalo, New York
 Joseph T. Clinton, Wilkes-Barre, Pa.

ARTICLE VII

Duration

The duration of the corporation shall be perpetual.

ARTICLE VIII

Powers

The corporation shall possess all the powers necessary to conduct the business or businesses and carry out the objects herein expressed and all those expressly conferred upon corporations by and enumerated in the Code of Alabama, Title 10 Section 70 through 93, both inclusive, together with all other powers bestowed upon such corporations under any of the laws of Alabama as well as those necessarily implied, and together with the following and additional powers:

(a) To lend money and take security therefor, or to borrow money and give security therefor on any or all the property of the corporation owned or leased by it;

(b) To engage in business as natural persons may not inconsistent with the provisions of law pertaining to the organization and regulation of corporations in the State of Alabama.

ARTICLE IX

The dates on which the stockholders' annual meeting shall be held, the number of Directors and terms of office; the terms of office of the Officers and the powers and duties of the Officers shall be fixed by the By-Laws of the corporation. Other Officers than those named herein may be created by the By-Laws and filled by the Board of Directors. The corporation shall have power to make By-Laws for the regulation and government of the corporation, its agents, servants and officers and for all other purposes not inconsistent with the Constitution and laws of the State of Alabama.

3371 IN WITNESS WHEREOF, the undersigned incorporators have subscribed their names to this Certificate of Incorporation on this the 18th day of April, 1957.

JOSEPH J. GORMAN.

J. W. KOESSLER.

KENNETH L. KOESSLER.

WILLIAM J. HAMMOND.

JOSEPH T. CLINTON.

3373 [——— for ident., P-128 in evid., H. T. Noel, 06
Reporter, U.S. District Court.]

*19 Color Presses. Total Capacity 40 Million Four-Page Sections
Per Week.*

INTERNATIONAL COLOR PRINTING CO.,
NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,
Phone, Wilkes-Barre VA 4-7871,
208 George Avenue, Wilkes-Barre, Pa., February 5, 1960

Letter OK to File
Mr. J. W. KOESSLER,
Greater Buffalo Press,
302 Grote Street,
Buffalo 7, New York

DEAR WALTER: I am writing this now after another meeting with Joe Clinton on the subject of the South.

We expect to complete our press 2302 between February 1 and March 1st. We would then be able to go ahead with 20. We expect to have 2022 completed sometime about the first of May, and in the meantime we can start taking the press down for shipment, and in any event we would have the complete press in Alabama probably ready for erection about the middle of May.

Our press and motor pits in Alabama were built for 100 horsepower motor, having in mind that we are running very satisfactorily 12 cylinders with 100 horsepower. Also we have quite a bit of margin for extra capacity when running the 100 horsepower. However, it was decided in Buffalo that we ought to increase the capacity from 100 horsepower to 200 horsepower. It is planned to make this increase by adding a new 100 horsepower drive and with two motors we would have the assurance of having at least one of the two operating instead of getting one 200 horsepower motor. The present motor pit is not large enough to take the additional equipment, and the conduit running from the balcony to the present pit is not large enough to take care of an additional motor. Therefore, we will have to enlarge the pit and make provisions for running additional conduit from the balcony to the motor.

I think all of this work should be done before we begin erecting the press. Since we are just now getting into the proposition of another motor we have no idea about delivery, but we can get all the information necessary to enlarge the pit, etc. Joe thinks that so that this work should not hold up the erection we should get started as soon as possible. We could have Roger redraw the motor pit. Our electrician, Fred Brown, can sketch out the conduit. We could engage a man in Sylacauga to do the pit work, and we could do likewise with a Sylacauga man for the electrical work. We have had quite a bit of experience with the electrician in Sylacauga, and we believe he is capable to do a competent job.

We expect to get from Steve drawings, prices, etc., on the buildings, tanks, pumps, etc., in connection with the ink installation in Lufkin. Building will have to be fitted into the present area so that we can best utilize space available, leave room for expansion, etc. Joe expects to get cost information for duplicating the Lufkin setup and also investigate the possibility further of using underground tanks.

Plating tanks are in the plant, although some need to be insulated and covered on the outside. Also painted. They can be positioned in the Stereo room so that the plumbing and electrical work can be started. We are now purchasing the
3374 crane equipment for over the nickel tanks and this can be installed as soon as possible.

We plan on purchasing the library racks for holding plate boxes in Birmingham, and these will be assembled in the plant.

As things stand now we think that Joe Clinton should go to Sylacauga about the second week in March. He would be able to line up a lot of material which needs to be purchased locally and arrange for some of the work which must be done such as motor pit, ink tanks, racks, etc.

As things stand now, we figure that Joe would leave about March 15th, and stay in Sylacauga three or four weeks and return to Wilkes-Barre about April 1st, and stay maybe for the month of April. In the meantime he will get in touch with Buffalo to coordinate the material in the works, shipment of first items, etc., and then he would count on returning to Sylacauga again early in May for a few weeks. He wanted to have my approval of his thinking and I have given it, and I think

1580

he will go down and we will pursue along the lines laid out above unless we hear further from you.

Sincerely yours,

Joseph J. Gorman
JOSEPH J. GORMAN,

JJG/hlm

cc: Kenneth Koessler

3375 [——— for ident., P-129 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

CC: J.W.B., Tom, Walter Koessler, Roger

HEARST NEWSPAPERS,
Hearst Magazine Building,
57th Street at 8th Avenue,
New York 19, N.Y.
October 10, 1955.

Mr. J. J. GORMAN,
International Color Printing Co.,
268 George Avenue,
Wilkes Barre, Penna.

DEAR JOE: To provide a written understanding of the telephone agreement made between you and me for the sale of the Baltimore Magazine press (Hoe web #2022), I am briefly summarizing what we agreed on.

You have purchased all of the structure that constitutes one half of the press, including 12 plate and 12 impression cylinders, ink fountains, angle bars, pipe rollers, compensators, roll stands, a single right angle folder, rubber rollers and the complete 100/7½HP General Electric drive.

The price agreed on is \$32,500 as and where the press stands in Baltimore.

You will bear the expense for dismantling and removal of the equipment from the building. However you wish to delay

this work for a month at least, until your plans are better formulated.

Before the dismantling work is begun you will send a check for the purchase price directly to the Baltimore News-Post.

If this note covers our entire agreement as you understand it, will you please write me an acknowledgment. If it is otherwise please write me too.

Sincerely,

EUGENE MULLER.

EM:mcc

3376 [For ident. P-130 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

SEPTEMBER 10, 1958.

Memo to: JOE GORMAN

cc: JOHN BOOTH, JOE CLINTON, BESSIE, VINCE, C.C.C., ROGER, JOHN GORMAN, JACK HOLTHAUS

Subject: Stereotype equipment for Sylacauga.

In the first part of Joe Clinton's report covering our meeting in Buffalo he lists web detectors. Buffalo says that they could supply them for \$1400.00, but it must be kept in mind that this \$1400.00 covers the cost of the web break devices and the web break detectors only. We have the proposition of making brackets and installing the system and Roger is presently in touch with Harold Rosenberg of Buerks for a layout.

Jack Koessler, Clinton reports, would send us down a layout of the Lufkin mat department. However, we are proceeding on our own layout and presently we have the mat department's room finished and the fans installed and the heat connected up. We are waiting for the four-way cutter and the Niagara shears from Buffalo.

Suppose we make two headings covering machinery and equipment that Buffalo is to supply for Sylacauga and what Wilkes-Barre is to supply for Sylacauga and a third heading

for what equipment they are going to be able to purchase in Sylvauga.

[illegible]

Polonium (Thompson solution will
be used in this experiment on
this solution caused by Thoms-
on's acid solution).

494-495

Author's address: Department of Psychology, University of Illinois at Chicago, Chicago, IL 60607, USA.

Student System

WILHELM KÖRBER

Therefore, Most Honorable
 Judges, I am with the students
 from NY who were
 here for the benefit of the
 law in a representative

9-44-000000 00-000000

[illegible]

1. The first step is to identify the problem. This involves understanding the situation and the goals that need to be achieved.

www.pearsoned.com.au

Get It?

2452

1. The Commission will accept
 2. The Commission will accept
 3. The Commission will accept

உயிரினப் பன்மையின்

000000 00000000

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

Figure 1

Notes: This particular kind of played in five recordings (included below).
 Notes: & further comments.

Shaw & Barker Telephones

Milling Machine for milling the slot for head piece

Milling Machine for rubber headings

"Speculating wherever money
is making me a speculator
speculating wherever in the
world is making me for the
realization of a better
new world."

Tell Father (We have money).

[illegible]

Nickel Equipment (We have now our tanks laid out on the second floor of No. 4 building in W. H. and it looks like we'll have to purchase some tanks because the ones we have don't seem to be large enough. We wanted the better equipment and we'll probably have to buy a filter. We are waiting until Jack Kessler comes down in W. H. to set this whole thing straightened out.)

Strongly think (We have
also in Witham Street
which we will send to
the Institution)

4) Inventory Equipment:
We'll purchase the
when we have a good
picture and if we can
until we get laid out in
the laboratory.

Water Use

Winter Weeks

I think there is enough covered by this present memo and Buffalo will follow through on this equipment for Syracuse. I think our stereotype requirements will be handled.

In connection with press equipment we decided that when the press cylinders and clutches are taken care of at the Sheldon Plant we should then proceed on press 2022. At present we are now working on the plate cylinders for press 2022 because of a kind of a hitch in our plans to go ahead with the clutches and

cylinders at the Sheldon. We are going to have a meeting either Wednesday or Thursday of this week to determine as to which press we will next install the clutches.

We talked about ink tanks, a paper baler, control panels; CO₂ equipment and other things for Sylacauga, but it looks to me that these could be handled in due time. Summarizing:

Wichita Falls:	Buffalo:	Sylacauga:
Thermox Mat Dryer?	Fablen	Mat Film
Vacuum Pumps	Ovens	Conveyor Equipment
Casting Box	Four way Shears?	Plate Boxes
Shaver	Niagara Shears	Racks
Tail Cutter	Metal Pot	
Sta-Hi	Spouts & Pumps	
Nickel Equipment	Ovens at Casting Box	
Damping Block	Plate Splitter	
	Ring Cutter	
	Router	
	Proof Press	
	Shaver for reducing finished plates	
	Hoe & Backer Trimmers	
	Milling Machines	

HLM

TOM BRENNAN.

[— for ident., P-131 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

3379

DECEMBER 12, 1958.

Memo To: Mr. Gorman

Copies: John Booth, Tom Brennan, Vince, Bessie, Four Extras, Roger, W. K., J. K., K. K., W. H.

At Meeting in Buffalo on Monday, November 24th, Tom Brennan and I went over the Sylacauga Stereotype layout with Jack Koessler and Steve Menser. The following is a summary of the decision, instruction, etc.

Buffalo have laid out the Stereotype Department and we have proceeded to make some of the physical changes to fit in with the new plan. They made a drawing locating all of the equipment, conveyor system, etc. We went over the drawing

and made some revisions on the proposal. Also, we went over all of the equipment required and I made the following note concerning just about everything we would use in the Sylacauga Stereotype Department.

PLATE TRUCKS. Buffalo have metal plate trucks which are used to carry dead metal from the Library back to the casting box. These trucks are made of a size to fit under the conveyors. It was decided they would make up twelve trucks in Buffalo for Sylacauga.

NICKEL TANKS. It was decided to get all new nickel tanks. They thought they had one extra tank in Dunkirk which they are not using. It was decided to use the high tanks which will accommodate plates two high. Measer is going to get the measurements for us and we are to figure on using all new tanks. The drawings and specifications which they used for their Dunkirk tanks will be given to us and it was decided we would attempt to have these tanks made up in the South. Also, we would try to have the rubber covered tanks taken care of down there.

RECTIFIERS.—We advised that we have enough of the necessary rectifier equipment to handle the operation. It was brought out that we would need one rectifier on the cleaning tank and one on the plating tank. We stated that we have two 1500 amp rectifiers.

We will need a clearance of twelve feet to carry out 3380 the nickel tank. It will be necessary to check the elevation drawings to determine if the present location is all right. (Roger will you please take care of this).

We will check the hoist which was received from Buffalo Color Press to see if this would be suitable to convey the racks and the nickeling operation. (Roger will you please look into this).

RACKS. Buffalo will supply us with the racks for double plate nickeling.

PLATE BOX RACKS. We will make up these racks ourselves. We can buy the material and have the racks put together in Sylacauga.

PLATE BOXES. A supplier in Sylacauga is making up for us one hundred third-page size boxes. These should be received shortly. After they are received we will send a half dozen to Buffalo for them to try them out. If these boxes work out all right, and we expect they will, we will have all of the Sylacauga plate boxes made in Sylacauga.

ROUTERS—Buffalo will supply all of the necessary routers.
ROUTER FOR RUBBER—Buffalo will supply this also.
MILLING MACHINE FOR GROOVING PLATES. Buffalo will supply.

MILLING MACHINE FOR RUBBER TITLES. Jack Koessler wishes to check further on this item.

HESS & BARKER MACHINES—We will need two—one left hand and one right hand. We are to order these.

SHAVER FOR REDUCING ROUTED PLATES—Buffalo will supply.

PROOF PRESS—Buffalo will order a Gloss Proof Press similar to what they have in Buffalo.

BUMPING BLOCKS. We are to secure these.

STEREOTYPE POTS. Steve Measer will order a six ton pot and a three ton pot from Wood. He will order the same size metal spouts they are using in Lufkin and Dunkirk.

SHAVER—We will use the shaver which was sent up from Wilkes-Barre.

3381 CC: Mr. J. W. Koessler, John Booth, JJG., Vince, Bessie, Joe Clinton.

[—— for ident., P-132 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 20, 1959.

Mr. KENNETH KOESSLER,
 Greater Buffalo Press,
 302 Grote St.
 Buffalo, N.Y.

DEAR KENNETH: The other day we paid John O'Malley, the Trustee for the Keystone Magazine Corporation \$35,910.00 for the following items:

1-Baler	\$ 1,700.00
1-Scale	525.00
1-Lathe	1,025.00
4-Sheridan Machines with trms	24,500.00
1-Goss Boring Machine	1,000.00
2-Lockers	100.00
2-G. E. Water Coolers	150.00
(See Att. List) Office Equipment	1,500.00
1-Rectifier	250.00
2-Tail Cutters	600.00
Miscellaneous	500.00
Total	\$39,910.00

In addition to this material we purchased, two months ago, 100 tons of newsprint for \$7,500.00. This newsprint is all consumed and it ran and printed very well—it was Beaver Wood Fiber Company paper.

I think we can completely equip our Sylacauga office from the office equipment at Keystone and have stuff to spare.

So far as I know what we purchased is now available and as per our telephone conversation you will let me know when we will start to move.

The last word I had from John O'Malley is that they are going to auction the stuff that remains at Keystone. I am sure we will get adequate notice and we will be in touch with you.

Sincerely yours,

TOM BRENNAN,
INTERNATIONAL COLOR PRINTING CO.

[——— for ident., P-133 in evid., H. T. Noel, Official Reporter,
U.S. District Court.]

3382

INTERNATIONAL COLOR PRINTING Co.,
Wilkes-Barre, Pa., October 14, 1959

Mr. J. W. KOESSLER,
Greater Buffalo Press,
Buffalo, N.Y.

DEAR WALTER: Prior to four years ago, when King Features asked for a price on a new supplement, we figured the exact number of hours which would be required and the new plant which would be required, etc., and then estimated the labor cost. We then figured overhead per thousand including newsprint, ink, twine, wrapping, power, light, oil, grease, packing, pay, taxes, vacations, etc. We figured on arriving at an operating profit of \$7.00 per hour per single width press on all new business.

Since four years ago we have gradually been increasing desired profit per press hour until we are now at a point where we use \$15.00 instead of \$7.00. In other words we have more than doubled our operating profit on all new business. The plan had to be worked out gradually so as not to run into

much opposition from
overhead and we al
that right now on al
more than four years
Sincerely yours,

rs,

JOSEPH J. GORMAN.

3383 [— for id

Repent., P-134 in evid., H. T. Noel, Official
INTERNATPRter, U.S. District Court.]

Newspaper COONAL COLOR PRINTING CO.,

26ic and Magazine Supplements,

Phone, 3 George Avenue, Wilkes-Barre, Pa.,

Total Capacity 40Villkes-Barre VA 4-7871, August 23, 1955.

Branch Plant, 16 Million, Four-Page Sections Per Week,
43013 7 South Street, Peoria, Ill., Phone, Peoria

MR. WALTER KOES
Greater Buffalo Pro LER,
Buffalo, N.Y. ss,

DEAR WALTER: J

We printed about st a brief note about the first six months.
against a little less 30,000,000 four page sections weekly, as
number printed is an 32,000,000 last year. The difference in
from us—Toledo, Y principally the amount which you "took"
but in the end ever ungstown and Erie. Our loss was your gain
cerned. I would sa thing worked out satisfactorily for all con-
Weekly in operating that the transfer cost us about \$1,000.
Wilmington or Wor profit. Certainly glad you got it, instead of

For the first tw
(total profit befo
\$108,212.08. This ye
we charged more in
We have estimat
half of year. Deprec
after taxes, \$45,000
\$70,000.

In brief, for the fi
which I gave you y
stock.

In the period we charged direct to operating costs, \$40,000 for work done relocating stereo room, rebuilding presses, automatic pasters and a new folder for one of Goss presses. We capitalized about \$60,000. of improvements purchased on outside. Total cost for all improvements in period \$124,071., including some labor. Dividends paid to Govin family in period \$17,400. We have also paid off the \$35,000. note.

If we can maintain present rate of operating profit we should be able to set a schedule, starting about January 1, for repayment to bank. I would consider payment of \$35,000. note if we can handle this year.

We have not borrowed any money from local banks and have maintained a substantial balance. In this we have been aided by the fact that only a small amount of income tax was paid this year. (as explained in earlier letters.)

3384 There is no doubt that the margin of profit is too small for comfort or safety and it will be necessary to find substantial savings in ink, registry time, stereotype casting and elimination of one or more plants.

A very substantial saving will be necessary after we get a Southern plant started and that is why I don't feel we ought to get into a building which might prove a heavy burden to carry. On the other hand we don't want to operate on a basis which will not allow for efficiency.

Will send a June Balance Sheet along, and one of these days when I have more time I will try to explain various items a little more thoroughly.

I don't want to overload you with words, but at the same time think you should have the fullest explanation I can possibly give.

Best regards,

Joe

JOSEPH J. GORMAN.

JJG/RB

3385 [——— for ident., P-135 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

INTERNATIONAL COLOR PRINTING CO.,

NEWSPAPER COMIC AND MAGAZINE SUPPLEMENTS,

Phone, Wilkes-Barre VA 4-7871,

358 George St. Inc., Wilkes-Barre, Pa., December 17, 1959.

*19 Color Presses. Total Capacity 40 Million Four-Page Sections
Per Week.*

Mr. J. W. KOENSLER,

Greater Buffalo Press,

302 Grote Street,

Buffalo 7, New York

DEAR WALTER: Please let me know if you gave King Features
a production increase for Youngstown, Toledo and Erie at the
beginning of this year. I have in mind the possibility that if you
did not increase your price to King, Mr. Nicht has an argument,
maybe not a very good one—against an increase for us on the
work we are doing for King.

Sincerely yours,

J. J. GORMAN

JOSEPH J. GORMAN.

JJG/HLM

1590

3400 [——— for ident., P-155 in evid., H. T. Noel, Official
Reporter, U.S. District Court.]

Officers of International Color Printing Company from the
year 1950 to 1959.

1950

President.....Joseph J. Gorman
1st Vice President.....R. R. Govin
2nd Vice President & Treas.. John W. Booth
Secretary.....William S. McLean
Asst. Secretary.....Bessie J. Gorman

1951

The same as above.

1952

The same as above.

1953

The same as above.

1954

The same as above.

Early part of 1955

The same as above.

October—1955

President.....Joseph J. Gorman
Vice President.....Kenneth L. Koessler
Secretary.....William J. Hammond
Treasurer.....John W. Booth

1956

Same as above.

1957

Same as above.

1958

Same as above.

1959

Same as above.

1960

Same as above.

JOSEPH J. GORMAN.

3401 [D-5 for ident., D-2 in evid., H. T. Noel, Official Reporter, U.S. District Court.]

NOVEMBER 24, 1950.

Mr. HORACE POWELL,
Business Manager,
The Journal-Constitution,
Atlanta, Georgia.

DEAR MR. POWELL: This is to confirm our recent conversation with respect to the establishment of a Southern comic printing plant in the event of your acceptance of our direct proposal to produce comic sections of The Journal-Constitution.

Present conditions of the newsprint market and building industry make it impractical, if not impossible, to launch such a project at this time. However, we will agree to get started on such a plant within one year after newsprint becomes available in the South at the contract price and any building restrictions imposed by the federal government because of war or defense needs have been cancelled. The object of establishing such a plant would be to materially reduce transportation charges on your comics, as well as those which we are printing or would be printing for other newspapers in the South.

It is difficult to specifically define such a program, but our intention would be to establish the Southern plant at the earliest possible practical time.

With thanks for your kindness and consideration during our visit, I am,

Very sincerely yours,

J. W. KOESSLER,
President.

H

3402 [D-4] KING FEATURES SYNDICATE,
Tel. Murray Hill 2-5600,
Cable Address: KINGSYN New York,
235 East 45th Street, New York 17, N.Y., October 7, 1958.

FRANK J. NICHT, General Sales Manager.

Mr. J. WALTER KOESSLER,
Greater Buffalo Press, Inc.,
302 Grote Street,
Buffalo 7, New York.

DEAR MR. KOESSLER: I regret to have to tell you that the agreement which we sent you under date of July 31 has been

disapproved by Mr. Berlin. In view of this fact I am sure that our Board will not approve or ratify it.

Therefore I must ask that you consider it to be no agreement.

Yours very truly,

Frank J. Nicht,
FRANK J. NICHT.

FJN:ML

3403 [D-5] THE GREATER BUFFALO PRESS INC.,
302 Grote Street, Telephone BEdford 6410, Buffalo
7, New York,

Web Press Color Printing,
October 13, 1958.

[Received, Oct. 14, 1958, Domestic Sales Dept.]

Mr. F. J. NICHT,
King Features Syndicate,
235 E. 45th St.,
New York, New York.

DEAR FRANK: I have received your letter of Oct. 1, 1958 in reference to the agreement which you sent me July 31, 1958 and have noted its contents.

I have had no opportunity to present this agreement to our own board of directors for their approval.

Upon receipt of your letter I presented it to an informal meeting of our directors and they disapproved.

Since the agreement has not been approved and cannot be approved by either corporation it must be considered void and no agreement.

Very truly yours,

J. W. KOESSLER,
President.

JWK:bv
cc: A. R. Graustein
F. C. McLearn
10/14/58

3404 [D-6] [Caption Omitted in Printing]

**INTERROGATORIES PROPOUNDED BY THE
PLAINTIFF**

TO: The Hearst Corporation, Defendant:

PLEASE TAKE NOTICE, that pursuant to Rule 33 of the Federal Rules of Civil Procedure, the United States of America, plaintiff, propounds the following interrogatories to be answered by the above-named defendant:

No. 1. Set forth the names of such newspapers which had color comic supplements furnished to them, pursuant to written contracts entered into with King Features Syndicate, and which contracts in the period from 1954 to the present were cancelled, terminated, or otherwise not renewed, by reason of such newspapers entering into contracts with Greater Buffalo Press, Incorporated, or any of its subsidiaries or affiliates, and the dates thereof.

No. 2. State the names of such newspapers which had their color comic supplements printed at International Color Printing Company's plants, or Greater Buffalo Press plants in New York, pursuant to contracts with such newspapers and
3405 King Features Syndicate, and which supplement printing was transferred with in the duration of such contracts, or the renewals thereof, to the Southwest Color Printing Corporation at Lufkin, Texas, and the dates of such transfers.

No. 3. State the dollar figures setting forth the sum paid by King Features Syndicate to Greater Buffalo Press, or any of its subsidiaries or affiliates, for the printing of all color comic supplements of newspapers, under contract with King Features Syndicate, at the Lufkin plant of the Southwest Color Printing Corporation for each of the years 1958 through 1961.

No. 4. State the names of such newspapers which had their color comic supplements printed at International Color Printing Company's Wilkes-Barre plant, pursuant to contracts with King Features Syndicate and such newspapers, and which supplement printing was transferred within the duration of such contracts, or the renewals thereof, to the Dixie Color Printing Corporation at its Sylacauga plant, and the dates of such transfers.

No. 5. Set forth the dollar figures stating the sum paid by King Features Syndicate to Greater Buffalo Press, or any of its subsidiaries or affiliates, for the printing of color comic supplements of newspapers under contract with King Features Syndicate, by Dixie Color Printing Corporation for each year to date.

No. 6. Set forth the total volume of production, in terms of 4-page sections, of color comic supplements printed for the newspapers which were the subject of the transfers referred to in:

- 3406 (a) Interrogatory 2; and
(b) Interrogatory 4.

Dated: April 28, 1964.

Elliott H. Feldman
ELLIOTT H. FELDMAN,
Donald J. Williamson
DONALD J. WILLIAMSON,
Attorneys, Department of Justice.

3407

(Caption omitted in Printing)

ANSWER OF DEFENDANT THE HEARST CORPORATION TO
INTERROGATORIES DATED APRIL 28, 1964 SERVED ON IT
BY PLAINTIFF

INTERROGATORY No. 1

Newspaper Contracts	Cancellation Date
Abilene, Tex. NEWS.....	12/25/63
Big Spring, Tex. HERALD.....	"
Corpus-Christi, Tex. CALLER TIMES.....	"
Dennison, Tex. HERALD.....	"
Greenville, Tex. Banner.....	"
Marshall, Tex. NEWS.....	"
Paris, Tex. NEWS.....	"
San Angelo, Tex. STANDARD.....	"
Snyder, Tex. NEWS.....	"
Dallas, Tex. TIMES HERALD.....	12/27/63
Erie, Penna. TIMES NEWS.....	9/21/63
Lake Charles, La. AMERICAN PRESS.....	8/11/63
Monroe, La. NEWS-STAR-WORLD.....	12/30/63
Shreveport, La. TIMES.....	9/2/63
Wichita Falls, Tex. TIMES & RECORD NEWS.....	7/1/63
Austin, Tex. AMERICAN STATESMAN.....	11/6/63
Port Arthur, Texas.....	11/6/63
Waco, Texas.....	"
Birmingham, Ala. NEWS.....	3/17/64
Houston, Tex. POST.....	1/4/64
Miami, Fla. HERALD.....	5/10/64

INTERROGATORIES No. 2 AND No. 6

3408

LIST OF K.F.S. READYPRINT CLIENTS TRANSFERRED TO LUFKIN

From I.C.P. Wilkes-Barre

Newspapers	Dates of Transfer to Lufkin	Circ. in 4's When Disc.
*Houston, Tex., POST-----	12/14/58	662, 500
*Austin, Tex., AMERICAN STATESMAN-----	1/25/59	177, 000
*Port Arthur, Tex., NEWS-----	1/25/59	57, 200
*Waco, Tex., TRIBUNE-HERALD-----	1/25/59	150, 000
Total-----		1, 046, 700

*Subsequently lost to Lufkin.

From G.B.P. Dunkirk

	Dates of Transfer	Present Circ. in 4's
Burlington, Iowa, HAWKEYE-----	12/7/58	42, 000
Casper, Wyo., TRIBUNE-HERALD & MORN- ING STAR-----	7/30/61	38, 000
Colorado Springs, COLO FREE PRESS-----	7/30/61	39, 000
Hutchinson, Kan., NEWS HERALD-----	6/12/60	109, 000
Joplin, Mo., GLOBE-----	7/30/61	71, 500
Salina, Kan., JOURNAL-----	6/12/60	67, 000
Santa Fe, N.M., NEW MEXICAN-----	12/7/58	34, 800
Springfield, Mo., NEWS LEADER-----	7/30/61	149, 000
Topeka, Kan., CAPITAL-----	6/12/60	114, 000
Tulsa, Okla., WORLD-----	12/7/58	525, 000
Tyler, Tex., COURIER TIMES-----	12/7/58	59, 000
**Wichita, Kans., EAGLE BEACON-----	10/16/60	501, 000
Total-----		1, 749, 300

**While printed in Wilkes-Barre, the Wichita, Kans. EAGLE was an 8-page standard size section with a run of 170,000. It was transferred to Lufkin effective June 12, 1960.

The Wichita Kans. BEACON, long printed in Peoria by ICP for KFS, was transferred to GBP's Dunkirk plant when the Peoria operation was closed down.

The Wichita, Kans. EAGLE suspended publication and the two newspapers were combined as the EAGLE-BEACON, printed in Lufkin as a 12-page standard section effective with the October 16, 1960, release.

INTERROGATORY No. 3

Year	Sum paid by King Features Syndicate
1958-----	\$45, 097. 03
1959-----	578, 845. 80
1960-----	686, 324. 64
1961-----	705, 028. 52

3409

INTERROGATORIES No. 4 and No. 6

LIST OF K.F.R. READYPRINT CLIENTS TRANSFERRED FROM L.C.P. WILKES-BARR
TO DIXIE COLOR PRINTING, SYLACAUGA, ALA.

Newsprint	Date of Transfer to Sylacauga	Present Circulation
Atlanta, Ga., GENERAL ADV.		
Bristol, Va., HERALD COURIER	10/13/63	59,000
Clearwater, Fla., SUN	"	50,000
Cadaden, Ala., TIMES	"	50,000
Ironton, O., TRIBUNE	"	20,000
Martinsville, Va., BULLETIN	"	27,000
Montgomery, Ala., ADVERTISER	3/24/63	176,000
Spartanburg, S.C., HERALD JOURNAL	10/13/63	88,000
Tuscaloosa, Ala., NEWS	"	43,500
Augusta, Ga., CHRONICLE	12/22/63	128,000
Charlotte, N.C., OBSERVER	5/5/63	613,000
Chattanooga, Tenn., TIMES	"	262,500
Columbus, Ga., LEDGER ENQUIRER	8/4/63	174,000
Huntsville, Ala., TIMES	10/23/63	92,000
Jacksonville, Fla., TIMES-UNION	6/23/63	343,000
Orlando, Fla., SENTINEL-STAR	7/7/63	456,000
St. Petersburg, Fla., TIMES	9/1/63	427,500
Savannah, Ga., NEWS	7/28/63	160,500
Tampa, Fla., TRIBUNE	5/5/63	337,000
Total		3,919,300
*Miami, Fla., HERALD:		
Present Size, 16 Std.		
Present Circulation, 413,000.		

*Subsequently lost to Sylacauga.

INTERROGATORY No. 5

Year	Payments made for Sylacauga's Printing
1963	\$833,319.27
1964 (thru April 30)	581,126.96

Dated: New York, New York, May 28, 1964.

GALLOR CLIMENKO & GOWD
By: /s/ JESSE CLIMENKO,
(A Member of the firm)

Attorneys for Defendant,
THE HEARST CORPORATION,
360 Lexington Avenue,
New York 17, New York.

3410 **RAY K. ROGERS**, being duly sworn, deposes and says:

That he is the Sales Manager of **THE HEARST CORPORATION**, a defendant in the above entitled action; that he has read the foregoing Answer of Defendant The Hearst Corporation to Interrogatories; and the same are true to the best of his information and belief.

/s/ **RAY K. ROGERS**.

[Caption Omitted in Printing]

3411 **COMPLAINT** (As Amended 10/14/65)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, in order to prevent and restrain violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

2. The defendants transact business within the Western District of New York and are found therein.

3412

II

THE DEFENDANTS

3. Greater Buffalo Press, Incorporated (hereinafter referred to as Greater Buffalo), a corporation organized and existing under the laws of the State of New York, with its principal place

of business in Buffalo, New York, is hereby made a defendant herein. Greater Buffalo engages in the printing of color comic supplements; it is the largest printer of color comic supplements in the United States. It maintains a printing plant at Buffalo, New York and maintains, through its subsidiaries, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, plants at Wilkes-Barre, Pennsylvania, Lufkin, Texas and Sylacauga, Alabama, respectively. It also utilizes the printing facilities of the Great Lakes Color Printing Corporation of Dunkirk, New York. Greater Buffalo's business includes the sale of its color comic supplement printing services to newspapers and to comic feature syndicates. Greater Buffalo is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

4. The Hearst Corporation (hereinafter referred to as Hearst), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York, is made a defendant herein. Hearst, through its unincorporated division, King Features Syndicate (hereinafter referred to as King), is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers. King maintains a sales force, members of which regularly visit the offices of newspapers throughout the United States. King also engages in the business of selling color comic supplement printing services, not only for the printing of its own copyrighted features, but for the features of competing comic feature syndicates as well. King contracts to provide color comic supplement printing services with or without the copyrighted features which it licenses. It does not engage in any printing but contracts with a printer to fulfill its commitments for color comic supplement printing. Hearst is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

5. Newspaper Enterprise Association, Inc. (hereinafter referred to as NEA), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio, is hereby made a defendant herein. NEA, the voting stock of which is owned by E.W. Scripps Company, Inc., Cincinnati, Ohio, is engaged in the business of

ensing copyrighted newspaper features, including color comic
atures, to newspapers. NEA is one of the largest such syndi-
ates in the United States and maintains a sales force, members
which regularly visit the offices of newspapers throughout the
United States. NEA also engages in the business of selling color
comic supplement printing services, not only for the printing
of its own copyrighted features, but for the features of com-
eting comic feature syndicates as well. NEA also contracts to
provide color comic supplement printing services with or
without the copyrighted features which it licenses. It does not
engage in any printing but contracts with a printer to fulfill
its commitments for color comic supplement printing. NEA is
charged with the violations, hereinafter alleged, of Sections 1
and 2 of the Sherman Act and Section 3 of the Clayton Act.

6. The International Color Printing Company, also known as
International Color Printing Co., Inc. (hereinafter re-
ferred to as International), a corporation organized and
existing under the laws of the State of Pennsylvania,
with its principal place of business at Wilkes-Barre, Pennsyl-
vania, is hereby made a defendant herein. International engages
in the printing of color comic supplements and operates two
color printing plants in Wilkes-Barre, Pennsylvania. Since 1954,
or prior thereto, International, pursuant to written contracts
entered into with King, is, and has been, obligated to print color
comic supplements exclusively for King. In or about June 1955,
International's out-standing stock was purchased by the de-
fendant, Greater Buffalo. International is charged with the
violation, hereinafter alleged, of Section 7 of the Clayton Act.

7. Southwest Color Printing Corporation, a corporation or-
ganized and existing under the laws of the State of Texas, with
its principal place of business in Lufkin, Texas, is hereby made
a defendant herein, for purposes of relief.

8. Dixie Color Printing Corporation, a corporation organized
and existing under the laws of the State of Alabama, with its
principal place of business at Sylacauga, Alabama, is hereby
made a defendant herein, for purposes of relief.

9. Whenever in this complaint reference is made to any act,
deed or transaction on the part of the defendants, such allega-
tion shall be deemed to mean that the officers, directors, agents
or employees of said defendant authorized, ordered or did such
act, deed or transaction for, or on behalf of, such defendant

while actively engaged in the management, direction and control of its affairs. Whenever reference is made to any act, deed or transaction on the part of King, such allegation shall be deemed to mean that the officers, directors, agents or employees of the defendant Hearst authorized, ordered or did such act, deed or transaction while actively engaged in the management, direction and control of Hearst's affairs.

III

THE CO-CONSPIRATOR

10. Eastern Color Printing Company (hereinafter called Eastern), Waterbury, Connecticut, is hereby named as co-conspirator. Eastern engages in the business of printing, among other things, color comic supplements for sale to newspapers. It maintains its printing facilities in or near, and main offices at Waterbury, Connecticut.

11. Whenever in this complaint reference is made to any act on the part of a co-conspirator, such allegation shall be deemed to mean that the officers, directors, agents or employees of the named co-conspirator, authorized, ordered or did such act, deed or transaction for, or on behalf of, such co-conspirator while actively engaged in the management, direction and control of its affairs.

IV

DEFINITION

12. The term "color comic supplements", as used herein, means supplements to Sunday or Saturday newspapers, printed in color, and containing, among other things, copyrighted comic features.

V

TRADE AND COMMERCE INVOLVED

13. Virtually every newspaper in the United States which publishes a Sunday edition distributes a color comic supplement with each copy of such edition. Color comic supplements range in size from four to twenty-four pages and consist of copyrighted features printed in color. The copyrighted features include, but are not limited to, comic strips, romance and adventure stories, cartoons, games and puzzles.

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approximately \$28,000,000 per year. Of such annual purchases approximately \$9,000,000 were made from Greater Buffalo, \$10,000,000 from King and \$1,500,000 from NEA. Thus, during the aforementioned period, Greater Buffalo, King and NEA accounted for approximately seventy-three per cent (73%) of such purchases, or on the basis of color comic supplement units sold, approximately eighty per cent (80%).

18. From 1954, or prior thereto, to the present date, King has maintained contracts with International, which operates two color printing plants in Wilkes-Barre, Pennsylvania. By the terms of such contracts and subject to certain conditions, International is, and has been, obligated to print color comic supplements exclusively for King. In addition, during the aforementioned period King has entered into arrangements or contracts with Greater Buffalo whereby Greater Buffalo has furnished newsprint and printed color comic supplements for supplement printing service customers of King.

19. Defendant NEA contracts with newspapers to furnish them with color comic supplement printing services. NEA arranges or contracts with Greater Buffalo and other printing companies, which actually furnish the newsprint and the color printing for NEA's newspaper customers.

20. Defendants Greater Buffalo, Hearst, NEA and International, and the co-conspirator Eastern, fulfill their 3418 contracts for color comic supplement printing through printing performed in plants in Buffalo, New York, Wilkes-Barre, Pennsylvania, Lufkin, Texas and Waterbury, Connecticut. The color comic supplements printed at these plants are shipped in interstate commerce to newspapers throughout the United States.

VI

OFFENSES CHARGED

Violations of Section 1 of the Sherman Act

21. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of this complaint, in

restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action between the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and, since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, the substantial terms of which have been and are:

- (a) to refrain from soliciting color comic supplement printing business from each other's customers; and
- (b) to maintain and stabilize the price of color comic supplement printing in the United States.

23. During the period of time covered by this complaint, the defendants and the co-conspirator, and others to the plaintiff unknown, for the purpose of effectuating the aforesaid combination and conspiracy, have done, among other things, the following:

3419 (a) In or about January or February 1954, representatives of the defendants Greater Buffalo and King held meetings in New York City, New York, at which, among other things, they agreed that:

(1) Greater Buffalo and King would divide between themselves the business of supplying color comic supplement printing services to the Gannett newspapers published in Utica and Binghamton, New York; and

(2) Greater Buffalo would pay King fifty dollars (\$50) per week to refrain from offering to the Waterloo Courier, Waterloo, Iowa, prices below those of Greater Buffalo for color comic supplement printing, as long as Greater Buffalo would service this account.

(b) Greater Buffalo and King did those things they agreed to do, pursuant to the agreements described in subparagraph (a);

(c) In or about November 1955, representatives of King and the co-conspirator Eastern held a meeting in New York City, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern have continued this arrangement to the date of this complaint; and

(d) In or about November 1955, representatives of the defendants King, NEA and Greater Buffalo held a meeting at the

Hotel Beverly in New York City, New York, at which they agreed, among other things, that King and NEA would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement services and keep knowledge of such agreement confined to their respective sales organizations. Pursuant to this arrangement, NEA did the following, among other things, when requested to submit bids to newspapers or their representatives:

(1) In or about March 1957, NEA submitted a bid to the Jackson, Mississippi, State Times at an artificially high and non-competitive price;

(2) In or about January 1956, NEA refused to submit a price quotation to an agent for the General Newspaper group in Atlanta, Georgia; and

(3) In or about January 1956, NEA refused to submit a price quotation to the publisher of the Tupelo, Mississippi Journal.

Violations of Section 2 of the Sherman Act

24. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize, the above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendants Greater Buffalo.

3421 Hearst and NEA, the substantial terms of which have been and are that they agreed to the terms set forth in subparagraphs (a) and (b) of paragraph 22 of this complaint, which subparagraphs are here realleged with the same force and effect as though said subparagraphs were here set forth in full.

26. In effectuation of the offense alleged in paragraph 24 of

this complaint, the defendants Greater Buffalo, Hearst and NEA, among other things, did the following:

(a) Those things which as hereinbefore alleged in paragraph 25, they combined and conspired to do;

(b) Defendant Greater Buffalo increased its share of the market for printing of color comic supplements from approximately forty-two percent (42%) to approximately eighty percent (80%) by the purchase, in or about June 1955, of all the outstanding stock of International;

(c) Defendant Hearst promoted, encouraged and assisted defendant Greater Buffalo in the aforesaid purchase of International;

(d) Defendant Greater Buffalo, in or about 1956, itself or through its subsidiary, Southwest Color Printing Corporation, commenced the erection of a plant at Lufkin, Texas, for the printing of color comic supplements; and

(e) Defendant Greater Buffalo, in or about 1957, itself or through its subsidiary, Dixie Color Printing Corporation, commenced the erection of a plant at Sylacauga, Alabama, for the printing of color comic supplements.

Violation of Section 7 of the Clayton Act

27. The effect of the aforesaid acquisition by the defendant Greater Buffalo of the defendant International, as set forth in subparagraph (b) of paragraph 26 hereof, which subparagraph is here realleged with the same force and effect as though said subparagraph were here set forth in full, has been, and
3422 will continue to be, a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade and commerce in the United States, in violation of Section 7 of the Clayton Act, in that competition between the defendants Greater Buffalo and International has been and will continue to be eliminated.

Violations of Section 3 of the Clayton Act

28. Beginning in or about 1954, or prior thereto, and continuing to the date of the filing of this complaint, defendants Hearst and NEA severally have sold, and presently sell, comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such news-

paper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors. The effect of said transactions and of such condition, agreement or understanding has been, and may continue to be, a substantial lessening of competition or tendency to create a monopoly in the sale of color comic supplement printing services in interstate commerce, in violation of Section 3 of the Clayton Act.

29. The violations alleged in paragraphs 21, 24, 27 and 28 of this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

30. The aforesaid offenses charged in paragraphs 21, 24, 27 and 28 of this complaint have had, among other things, the following effects:

(a) Newspapers in many parts of the United States have been denied the advantages of competitive bidding for the printing of their color comic newspaper supplements;

3423 (b) Newspapers not desiring the color comic supplement printing services offered by the defendants have been compelled to pay arbitrary prices for comic features;

(c) Price competition among defendants and the co-conspirator Eastern for the sale of color comic supplement printing has been eliminated;

(d) Competition in the printing and sale of color comic supplements has been suppressed and interstate trade and commerce in color comic supplements has been unreasonably restrained; and

(e) Printers offering color comic supplement printing services to newspapers have been restrained by the acts of these defendants from selling such services to newspaper customers.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that the defendants and the co-conspirator have combined and conspired to restrain and to monopolize, the interstate trade and commerce in the printing of color comic supplements and sale of color comic supplement printing services, in violation of Sections 1 and 2 of the Sherman Act.

2. That the acquisition by the defendant Greater Buffalo of the defendant International be adjudged a violation of Section 7 of the Clayton Act.

3424 3. That the aforesaid sales and contracts for sale by the defendants Hearst and NEA of comic features on the condition, agreement or understanding that the newspaper purchasers shall not deal in color comic supplement services being offered or sold by any competitor of the defendants be adjudged and decreed to be unlawful and in violation of Section 3 of the Clayton Act.

4. That the defendants, their officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from continuing, reviving, or renewing, directly or indirectly, the aforesaid combination and conspiracy and the aforesaid contracts, agreements, or understandings, and from practices having the purpose or effect of continuing, reviving or renewing any of the aforesaid offenses or any offense similar thereto.

5. That the Court adjudge and decree that the defendant Greater Buffalo has caused the erection of plants at Lufkin, Texas, and Sylacauga, Alabama, and used the same in effectuating and maintaining the combination and conspiracy to restrain and to monopolize, and that the Court enter such orders, as it may deem appropriate and necessary, directing the defendant Greater Buffalo, and its officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, to divest the ownership, control and participation in operating such plants in order to dissipate the effects of the violations herein alleged, and to establish free and unfettered competition in the trade and commerce herein involved.

6. That the defendant Greater Buffalo be required to divest itself of ownership of defendant International and that the defendant International be barred from selling any of its stock or assets to the other defendants or the co-conspirator 3425 named herein or to any of their officers, agents, directors or employees, or to any persons acting or claiming to act on their behalf.

7. That the defendants be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of their unlawful activities as hereinbefore alleged, and to permit and restore competition in interstate trade and

commerce in the printing and sale of color comic supplements.

8. That the Court schedule a separate hearing on questions of relief and consider at such hearing specific plans to be proposed by plaintiff, whereunder defendants Greater Buffalo, King and NEA will be required to take such steps as are necessary to sever their relationships with one another, with defendant International, and with defendants Southwest Color Printing Corporation and Dixie Color Printing Corporation.

9. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

10. That the plaintiff recover the costs of this suit. Dated: Buffalo, New York, 1961

William P. Rogers

WILLIAM P. ROGERS,

Attorney General.

Robert A. Bicks

ROBERT A. BICKS,

Assistant Attorney General.

Lewis Bernstein

LEWIS BERNSTEIN,

Attorney, Department of Justice.

Neil R. Farmelo

NEIL R. FARMELO,

United States Attorney.

Raymond M. Carlson

RAYMOND M. CARLSON.

Elliott H. Feldman

ELLIOTT H. FELDMAN.

John W. Poole, Jr.

JOHN W. POOLE, Jr.,

Attorneys, Department of Justice.

3426

[Caption Omitted in Printing]

PLAINTIFF'S PROPOSED FINDINGS OF FACT

Unless otherwise stated the following facts refer to events and practices during the period from January 1, 1954 through the trial of this action.

1. The printing of color comic supplements sold to newspapers, located throughout the country, for inclusion in their Sunday editions, is a line commerce.

2. Color comic supplements consist of newsprint printed with colored inks containing in the main reproductions of copyrighted color comic features, also advertising material, and at times other types of features. [Tr.-1593] ¹

3. While some newspapers print their own color comic supplements (hereafter referred to as supplements), the vast majority of supplements appearing in newspapers are printed by color comic printing companies (hereafter referred to as comic printers) which are engaged in the business of printing such supplements for newspapers. [P-62]

4. Many newspapers, which do not print their own supplements, are physically capable of printing such supplements. However, such newspapers find it economically advantageous to purchase such supplements, since the additional printing costs involved with available printing equipment, when employed primarily for black and white printing is utilized, exceed the charges incurred in purchasing the supplements. [Tr.-798-801]

Each supplement page instead of receiving one impression of ink must receive four impressions with an exacting job of alignment and adjustment for each impression. This results in some or all of the following additional costs: (1) use of trained personnel; (2) extra colored inks; (3) stereotype equipment and other machinery.

5. Newspapers purchase supplements by contracting 3427 directly with color comic printers, which print the supplements as ordered or by contracting with concerns, which do not themselves print the supplements, but have arrangements with printers for the latter to print such supplements and have them delivered to the newspapers. [P-62; Tr.-1599; 1798-99]

6. Newspapers contemporaneously with contracting for the purchase of supplements, contract for the purchase of the rights to the copyrighted comic features which appear in such supplements. Such contracts are entered into after negotiations by newspapers with syndicates, and other concerns, which license

¹ "Tr.-" refers to transcript pages.

the rights for the subject matter of the comics and other features which appear in the supplements. [Tr.-1596; 1617; 1709-1800]

7. Generally, the fees charged newspapers for the licensing of copyrighted features contained in supplements are not made pursuant to published price lists, but are the result of bargaining negotiations between the newspaper and the licensor. [Tr.-1823-25; Deposition, Frank J. Nicht, 1961, p. 20]

8. The newspaper syndicates or service organizations licensing newspapers with the rights for features have at their disposal, either by the employment of skilled personnel or through commissions paid to such personnel, the works of artists, cartoonists, and other feature writers. [Tr.-1838-39]

9. The newspapers in selecting particular comic features desire such features which have readership, or an actual or potential public following. However, the ability of a newspaper to obtain features is limited to those which are not already licensed under an exclusive arrangement to other newspapers in competition with it. On the other hand, the syndicate's success lies in its ability to offer not only features which are desirable, but available because of no prior exclusive commitments. [Tr.-1848-49; 1105-08]

10. In 1955, there were seven significant comic supplement printers. The supplement printing business of these comic printers was obtained by either one or two of the following methods. Firstly, by contracts directly between the comic printers themselves and the newspaper account. Secondly, by non-printing concerns which solicited and contracted to supply the supplements to the newspapers. They then ordered such printing from comic printers, with which they had previously arranged for the printing and delivery of the supplements to such newspapers as they would specify. The significant comic printers were:

Greater Buffalo Press, Inc.
Buffalo, New York
The International Color Printing
Company
Wilkes-Barre, Pennsylvania
Buffalo Colorpress, Inc.
Buffalo, New York
Eastern Color Printing Company

Waterbury, Connecticut
Acme Colorprint Company
San Bernardino, California
Southern Colorprint
Newport News, Virginia
World Color Press, Inc.
St. Louis, Missouri

A. Of the foregoing comic printers, two printers, The International Color Printing Company and Buffalo Colorpress, Inc., did not engage actively in soliciting and selling supplement printing directly to newspapers. As hereinafter set forth International printed exclusively for King Features Syndicate's newspaper customers, while most of the sales of supplements printed by Buffalo Colorpress were handled by Newspaper Enterprise Association, Inc. [Tr.-1286; 1600-1601]

11. By 1955, and immediately prior thereto, the two largest comic printers were Greater Buffalo Press, Inc. (hereafter referred to as Greater Buffalo) and The International Color Printing Company (hereafter referred to as International). Greater Buffalo's weekly volume of printing for the year 1955, measured in terms of 4-page sections, amounted to approximately 26,843,474 fours, while International's weekly volume of printing for the same year was about 27,237,658 fours. [P-62]

A. Greater Buffalo and International in the year 1955 each accounted for at least five times the volume printed by any one of the other significant comic printers. [P-62]

DEFENDANTS

Greater Buffalo Press, Inc.

12. Greater Buffalo in 1955 was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York, and had facilities for printing such supplements at Buffalo and Dunkirk, New York. [P-138, pars. 1, 3]

13. Greater Buffalo solicits and sells directly to newspaper supplements which it prints at its own facilities. It also prints supplements for newspapers, by arrangement with syndicates and other service organizations, which have contracted with newspapers to provide such supplements. [Tr.-789-790; 847] Greater Buffalo's annual gross receipts in 1954, for the sale and printing of supplements, were approximately \$8,613,000. [P-138, pars. 2, 15]

A. Greater Buffalo had commenced the printing of such supplements in 1933 at its Buffalo, New York, plant with a capital investment of \$3,000 by its principal stockholders. [Tr.-782; 788; P-138, par. 2]

15. Greater Buffalo since 1955, through its wholly-owned subsidiary corporations, commenced operations for the printing of supplements at additional plants in Lufkin, Texas, and Sylacauga, Alabama. [P-138, pars. 20, 21; Tr.-820]

16. Southwest Color Printing Corporation and Dixie Color Printing Corporation are wholly-owned corporations of Greater Buffalo and are named defendants for purposes of relief. Such defendant corporations and their time and place of incorporation are as follows:

3430 A. Southwest Color Printing Corporation (hereinafter referred to as Southwest) was incorporated in 1956 under the laws of the State of Texas. It maintains its principal place of business in Lufkin, Texas, and printing operations at that plant were commenced in 1958. [P-138, pars. 19, 20]

B. Dixie Color Printing Corporation (hereinafter referred to as Dixie) was incorporated in 1957 under the laws of the State of Alabama. It maintains its principal place of business in Sylacauga, Alabama, and printing operations at its plant were commenced in 1963. [P-138, pars. 21; Tr.-920]

The International Color Printing Company

17. International in 1955 was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. It then had facilities for the printing supplements at Wilkes-Barre, Pennsylvania, and Peoria, Illinois. [P-138, pars. 7, 8]

18. International's annual gross receipts in 1954 for the sale and printing of supplements were approximately \$8,483,000. [P-138, par. 15]

A. International had commenced the printing of such supplements in 1924 at Wilkes-Barre, Pennsylvania. It commenced such printing with a loan of \$50,000 by its principal stockholder. That loan was repaid during the years 1928-1929. It also made another loan of \$35,000 which was repaid to the daughter of the original stockholder and stockholder in 1955 when International's stock was purchased by Greater Buffalo Press. [Tr.-1281; 1297]

19. International, unlike Greater Buffalo, did not in 1955 solicit directly and sell supplements to the newspapers for which it printed. Instead it printed such supplements

3431 exclusively for the newspaper customers of King Features Syndicate, a division of The Hearst Corporation (hereafter referred to as King).

A. International was obligated to print exclusively for King's newspaper customers during the period from 1925 to 1955, under a continuous series of written contracts between International and King.

1. The first such written contract was entered into in about 1927. Subsequent contracts provided that King had to place at least 75 per cent of its printing with International in return for an obligation for International to print exclusively for King's customers. The foregoing contractual modification was made, since transportation costs precluded the shipment of supplements from International's plants to the West Coast. [Tr.-1285-86; P-1, p. 1]

B. International did not maintain a sales force from 1927 to 1955, nor did any of its officers and employees actively solicit and obtain newspaper accounts, because it printed exclusively for King's newspaper customers. [Tr.-1284-85]

Newspaper Enterprise Association, Inc.

20. Newspaper Enterprise Association, Inc. (hereafter referred to as NEA) in 1955 was a corporation organized and existing under the laws of the State of Delaware, and was a subsidiary of The E. W. Scripps Company which, among other enterprises, managed a newspaper chain. NEA maintained its principal place of business in Cleveland, Ohio. [P-138, par. 22; Tr.-1754]

21. In 1955 and prior thereto the business entity NEA, or NEA Service, Inc., as it was then known, was not a printer of supplements, but did engage in supplement printing through its subsidiary Buffalo Colorpress, Inc. Such subsidiary 3432 printed supplements for many NEA supplement customers. Other comic printers printed for the remaining NEA supplement customers, pursuant to arrangements previously made with NEA. [Tr.-1601: 1798-99; P-138, par. 23, 25]

A. Buffalo Colorpress, Inc., in 1955 had a printing plant located in Buffalo, New York. The capital stock of Buffalo Colorpress was owned only by NEA and its parent corporation, The E. W. Scripps Company. [P-138, par. 25; Tr.-1772]

B. Buffalo Colorpress discontinued printing supplements in the latter part of 1955, and the corporation and its facilities were liquidated the following year. [P-138, pars. 24, 25]

22. In addition to selling supplement printing to newspapers through its sales force, NEA also licensed newspapers with feature rights, including the subject matter of comics. NEA characterizes itself as a newspaper feature service organization in that it also makes available through licensing to newspapers, for their weekday editions, all types of copyrighted features, which include cartoons, columnists and other material. However, comics appearing in Sunday supplements are syndicated in that the rights to each such feature are available for sale to newspapers. [P-138, par. 23; Tr.-1588-91; 1596]

23. Newspapers owned or controlled by The E. W. Scripps Company, in 1955 and since, function as independent entities. Accordingly, NEA has competed, and competes with other supplement sellers and feature licensors, for the business of
3433 such newspapers. [Tr.-1769-70]

CO-CONSPIRATOR KING

The Hearst Corporation

24. The Hearst Corporation (hereafter referred to as Hearst) was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. King Features Syndicate (hereafter referred to as King) was an unincorporated division of Hearst. [P-138, par. 17]

25. King, in 1955 and prior thereto, sold supplement printing to newspapers. In addition, King licensed Feature Rights to newspapers, including the subject matter, which appeared in supplements. King did not print the comic color supplements it sold to newspapers, but made arrangements to have such supplements printed for its newspaper customers. [P-138, par. 12]

26. Hearst was a named defendant in the original complaint as filed herein. However, on August 31, 1965 this Court entered a decree, with the consent of Hearst and the plaintiff. The decree prohibits Hearst from engaging in certain licensing practices. It also compelled Hearst to separately list its fee for licensing comic features and the price for the printing of the supplements, if, as and when a plant for printing purposes is

divested pursuant to a final judgment in this action. Greater Buffalo and NEA did not make formal objection to any part of the decree prior to its entry, although given an opportunity to do so. [Final Judgment, Aug. 31, 1965 IV (C)]

Trade Practices

27. Among the singular trade practices in the business of selling and printing supplements are the following:

A. Comic printers charge supplement sellers less than newspapers for supplement printing. Syndicates and other non-printer sellers realize their profit from the difference between the amount they pay printers and the remuneration received from their newspaper customers.

1. International, which printed exclusively for King's customers prior to 1955, charged King a flat rate for all supplement printing up to a given volume. Such charges applied irrespective of extra costs incurred for plate changes and other expenses. King, in turn, entered into written contracts with its customers for periods varying from 1 to 5 years at higher prices than it paid International. King's profits represented the difference in the amounts it paid to International and the monies received from its newspaper customers. [Tr.-1286; P-138, par. 13]

2. Greater Buffalo charged uniform prices to newspapers for the various types of supplement printing. Since 1955, pursuant to written agreement, Greater Buffalo gives NEA a commission, or so-called royalty, from such published prices on printing placed in its printing plants by NEA. [P-27; P-28]

B. Implicit in the relationship between comic printers and supplement sellers is the understanding that the newspaper customers of such supplement sellers will not be solicited for supplement printing business by the comic printer which is then printing supplements for that newspaper under orders from such supplement seller. [Tr.-1763-64; 1767-68]

C. Comic printers convert antiquated presses which are obsolete for black and white printing. Successful operations are determined by the comic printer's resourcefulness and ability to assemble and improve such antiquated equipment. [Proceedings, October 25, 1961, pp. 35-50]

D. Greater Buffalo achieved success by 1955, because of its ability to print for large newspapers at low cost. It accomplished this because it possessed the following talents upon which comic printers depended for success: (a) resourcefulness in purchasing presses and equipment for which it had no immediate need but which it foresaw might be converted into useful equipment; storing such equipment until a need developed and then by improvising and augmenting it with additional attachments, converting, at a minimum cost, the equivalent of four black and white presses into machines capable of printing all colors contained in supplements; (b) skill in developing flexibility (the ability to print a number of different size sections) and in lowering costs for plate changes, alignments, and other makeready charges. [Tr.-792; 801; 908-09; 1103-04; 1261; 1289-90]

On the other hand, International achieved success by 1955 because of its ability to print for small newspapers at low cost. This fact was of great concern to NEA which did not have the use of International's printing facilities, since the latter printed exclusively for King. [Tr.-1618-19]

Section 7, Clayton Act

28. By 1955, and prior thereto, Greater Buffalo competed in the printing and sale of supplements with International and King as a single economic unit. International printed supplements exclusively for King which were sold to newspapers in competition with supplements printed and sold by Greater Buffalo. [P-1, p. 1]

29. By 1955, Greater Buffalo and International each printed about 37 per cent of the supplements printed for newspapers by significant supplement printers. In that year, each also accounted for more than 5 times the volume of printing done by any one of the other significant supplement printers. [P-62]

30. By 1955, Greater Buffalo made plans to erect a printing plant in Lufkin, Texas, to service customers in the South. To implement these plans, it entered into a newsprint contract with a paper mill in Lufkin, Texas, so as to ensure a continuous supply of newsprint which is the most expensive material for supplement printing. [Tr.-803-05; 813]

31. By 1955, International and King had initiated and developed definite plans for the opening of a printing plant in

Sylacauga, Alabama, so as to service customers in the South. Such plans contemplated competition with Greater Buffalo's proposed Lufkin printing plant.

A. International had investigated the Coosa Pines and Sylacauga area of Alabama, selected a site for a proposed plant in Sylacauga, Alabama, and obtained a written commitment for a continuous supply of newsprint from a paper mill in Coosa Pines. [P-53; P-56; P-57; P-108; P-109; P-111]

3437 1. In 1954, International's President, Joseph J. Gorman, made at least two trips to the Sylacauga area of Alabama in which he called upon the Coosa River Newsprint Company and investigated living conditions in the area. [P-53; P-108; P-109]

2. International's Board of Directors was informed, after Mr. Gorman's second visit to the Sylacauga area, that King would give its Southern business to International's "competitors" unless a Southern plant was established by International. Accordingly, it directed its President to:

- a. Negotiate a long-term written contract with King which would provide the revenue for the proposed printing plant;
- b. Negotiate a loan to defray the cost of a Southern plant after determining what costs would be entailed; and
- c. Advise the Coosa River Newsprint Company that it was desirous of obtaining a contract for the purchase of newsprint and having a building erected for its proposed printing plant. [P-54]

3. At the beginning of 1955, three key personnel of International made an extensive trip through the Southeast which included the Atlanta, Georgia, and Sylacauga, Alabama, areas. Such personnel were able to determine the type of building needed for International's requirements and the cost for the same.

3438 a. The International personnel met with builders, contractors, newspaper executives and gathered information as to the costs involved in the proposed project. In addition, they gathered cost data through information obtained as to the availability of skilled labor under the general wage scale.

b. The International personnel also recommended the acceptance of a site, which the people of Sylacauga offered, after examining other possible locations and entering into discussions with city and business leaders. [P-111]

4. A newsprint contract for a term of 10 years was entered between The Hearst Corporation, on behalf of King, and the Coosa River Newsprint Company whereby a commitment was made to deliver newsprint to a plant, "International would build in the Coosa Pines area" [such area included Sylacauga]. [P-50; P-57]

a. International decided that such a contract was a prerequisite for its undertaking any Southern operation, since Joseph J. Gorman, International's president, had been informed that Coosa River Newsprint Company officials were going to urge other supplement printers to locate in the area. Mr. Gorman believed that a written commitment was necessary to insure a continued supply of newsprint. [P-53, p. 2; P-110;

Proceedings, October 25, 1961, pp. 64, 66]

3430 5. On June 16, 1955, approximately two weeks prior to the sale of International to Greater Buffalo, International and King agreed upon printing charges which King thereafter paid and were incorporated in a long-term written contract. Such negotiations had commenced in 1954 between International's president and King's sales manager. [P-23]

6. By June 3, 1955, some three weeks before the International sale was consummated, International had selected a site in Sylacauga for its proposed plant and had advised the Sylacauga Chamber of Commerce that the citizens of Sylacauga should proceed to purchase the property which would be donated to International.

a. On June 3, 1955, International's President wrote to the Sylacauga Chamber of Commerce and stated that, "you should purchase the land." As to the grading of the land, which was contemplated to be part of the gift to International, he also wrote in part that, "as per our telegram of this date, please proceed with the grading in accordance with our understanding." [P-114]

7. International, in 1955, made mechanical alterations in its physical equipment at its plants in Wilkes-Barre, Pennsylvania, for the purpose of commencing printing operations in Sylacauga in 1956.

3440 a. In April 1955, International's president reported what was being done along the mechanical lines in Wilkes-Barre and how he contemplated utilizing presses in Wilkes-Barre for commencing printing operations in the South.

in 1956. The written contract with the Coosa River Newsprint Company provided for the delivery of newsprint to International at that time.

b. Work had progressed in moving presses, readying stereotype equipment in the two plants at Wilkes-Barre. Upon the completion of the same, before the end of 1955, International's president contemplated moving three single-width presses to the South.

c. Plans and specifications were drawn for a building of about 30,000 square feet, as against a much larger building Greater Buffalo was planning to erect at its proposed plant in Lufkin, Texas. [P-122]

32. Greater Buffalo, on June 25, 1955, purchased, for \$575,000, the outstanding stock of International, and through such purchase eliminated competition between its proposed Lufkin plant and International's proposed Sylacauga plant and increased its market position in supplement printing from approximately 37 to about 75 per cent. [P-138, par. 16; P-62]

A. Following Greater Buffalo's purchase of International's stock, officers of Greater Buffalo constituted a majority of International's Board of Directors, and of International's four officers, two were thereafter also officers of Greater Buffalo Press. [P-127; P-138, par. 17]

3441 B. Greater Buffalo in purchasing International's capital stock contemporaneously provided for International to retain its supplement printing business which yielded annual receipts of \$8,000,000.

1. About a week before International's stock was acquired by Greater Buffalo, King and International agreed upon the prices which were to be incorporated into a ten-year contract to replace their existing contract which was then terminable upon six months' notice. Such ten-year contract was made on July 30, 1958. Pursuant to the contract, International was to continue printing exclusively for King's newspaper customers. The contract followed prior contracts between the parties in that it provided that as long as King places at least 75 percent of its supplement printing business with International then International must print exclusively for King. [P-23]

2. On April 22, 1958, the foregoing agreement between International and King was modified to provide that any printing done by Greater Buffalo, at any of its printing plants, shall be

counted toward the printing business which King was obligated to give to International. [P.-60]

34. At the time International's stock was sold to Greater Buffalo, International was not a failing corporation nor faced with bankruptcy by reason of its failure to meet existing obligations.

A. International, in 1955 the year of its sale, paid dividends to its outgoing stockholders for its six-months' period 3442 which amounted to \$17,400. It had consistently paid such dividends during the previous five years. In 1954, for the entire year, such dividends amounted to \$34,800, and in 1953 the dividends paid to International's stockholders were \$44,700. [P-141]

B. From its inception, International's stockholders had made no capital investment in the corporation. Any loans which they had made to finance the operations, in lieu of operating capital, had been repaid. At the time of the International sale, neither of the two stockholders contributed to the management of the business. [Tr. 1296-97] The business was then run by Joseph Gorman who received an annual salary of \$39,193.77 in 1951. [Tr. -1549] Accordingly, the dividends represented cash distributions to persons who incurred no investment risks after all corporate expenses and taxes had been paid.

C. International's net profit after depreciation and taxes in 1955, the year of its sale to Greater Buffalo, was \$88,300. [P-141] No basic improvements were completed until 1957, or 1958, when preregistry was developed. [Proceedings, October 25, p. 25] In 1954, that profit amounted to \$11,146, and during the previous four years such profits exceeded \$70,000 for any given year. [P-141]

D. International, prior to its sale to Greater Buffalo, was not a vigorous or aggressive company. Its stockholders were absentee owners who, as non-participants in the corporation's operations, were interested in receiving dividends and not re-investing such sums in the company. [Tr.-1296-97]

3443 35. Following Greater Buffalo's purchase of International, on June 25, 1955, Greater Buffalo utilized substantial assets of International, including use of equipment, machinery, manpower, and funds for the acquisition of land, construction of building and plant facilities, and general preparation of a printing plant at Sylacauga, Alabama, at the site

selected by International prior to Greater Buffalo's acquisition of its stock. Greater Buffalo also transferred from International most of the printing which comprised the Sylacauga plant's initial operations.

A. Immediately following International's sale, International, which retained its corporate and business entity, uninterruptedly continued to carry on its negotiations with community leaders of the city of Sylacauga.

1. International requested the people with whom it had been dealing with in Sylacauga to sell bonds so as to give it a satisfactory building, and International contemplated leasing such a building for its proposed plant. [P-115]

2. Shortly after the International sale, International's president authorized King's sales manager to contact newspapers which might be involved and state that King is "the selling agent for International Color and that when a Southern plant is finally established, all sales for work produced by International Color Printing Company will be in the hands of King Features Syndicate." He also stated that while a Sylacauga plant had been agreed upon, it would proceed when final financial and building plans were made. [P-115]

B. As a result of negotiations between International and Sylacauga executives, graded land was deeded gratuitously to Greater Buffalo. The sum for the purchase of such 3444 land was obtained through the sale of bonds by Sylacauga citizens.

1. Citizens of Sylacauga, as a result of negotiations with International's officers, agreed to make a gift of certain land to International. Upon International's request such land was instead deeded to Greater Buffalo. International had initially requested that, "The Greater Buffalo Press will own the land and the building and will lease the same to its wholly owned subsidiary, The International Color Printing Company, for the operation of the printing business which would be in the name of The International Color Printing Company." [P-115; P-124]

a. Sylacauga citizens, through their Industrial Development Board, raised through contributions money which was to be used for purchasing and grading the donated land.

b. Immediately prior to the granting of the deed, approximately \$16,000 to \$18,000 of the required \$42,000 had to be raised for grading the land to be donated. Accordingly, the

mayor of Sylacauga and the Secretary of the Chamber of Commerce requested that a prepared letter be sent to them by International indicating that it would accept the land and thereafter build a printing plant. The purpose of the letter was to aid in soliciting the final money needed for Sylacauga 3445 to donate the land. It was decided that a supplemental letter would have to be sent indicating that the land should be deeded to Greater Buffalo, and that International would operate the plant, since it would only complicate matters to request that the land be deeded to Greater Buffalo. [P-118; P-118A]

C. International purchased Press #2022 from a newspaper of The Hearst Corporation located in Baltimore, Maryland. This was the press with which printing operations were commenced at the Sylacauga plant, and the most expensive piece of equipment.

1. International advanced the sum of \$32,500 for the press and thereafter the additional cost of shipment. At least three to five International personnel were involved in going to Baltimore for inspecting, dismantling and eventual housing of the press at International's Wilkes-Barre plant. [Proceedings, October 25, 1961, pp. 33, 73, 138]

D. The Hearst Corporation, on behalf of International, modified by written agreement the 1954 newsprint contract with the Coosa River Newsprint Company. The modification extended the termination of the original contract for four more years. The contract as thus modified was to terminate in 1969. [P-107; P-121]

E. During the three years Press #2022 was housed at the Wilkes-Barre plant, International supervised and implemented with its skilled personnel Greater Buffalo's design and plans for its improvement. [Proceedings, October 25, 1961, pp. 74, 81, 83-4] The press when completed was described by International's president as second to none in the country for supplement printing. [Deposition, Joseph J. Gorman, 1961, p. 26]

1. International personnel were utilized, and materials belonging to and purchased by International were used in improving the press. [Deposition, Joseph J. Gorman, 1961, p. 30; Proceedings, October 25, 1961, pp. 81-83]

3446 2. At periodic intervals, International recorded its progress to Greater Buffalo in building the press. Thus

on July 2, 1957, a report was given when one folder was completed and reels had been rebuilt. Another such written report was given in February 1960 when International's president reported that he expected to have the press in Alabama "ready for erection about the middle of May." [P-119; P-128]

F. International expended approximately \$243,000 for equipment, which included the press, and other costs relating to the Sylacauga plant. During such period of time, all or substantial parts of such sum, were outstanding advances prior to the reimbursement of International of almost all that sum after the commencement of this action. [Deposition, Joseph J. Gorman, 1961, p. 44; Proceedings, October 25, 1961, pp. 76, 78; Deposition. William Hammond, 1961, pp. 181, 185]

G. Six skilled workmen of International spent one year in Sylacauga. The majority of such workmen had worked on Press #2022 in Wilkes-Barre and most of their time in Sylacauga was allotted to erecting the press which had been dismantled for shipment to the proposed plant. [Deposition, Joseph J. Gorman, *supra.*, pp. 74-8; Proceedings, October 26, 1961, p. 299]

H. Such International employees while in Sylacauga were under the supervision of Joseph Clinton, an employee of International, who supervised the operations of erecting and preparing the plant for printing operations. Joseph Clinton later left International's employ and is presently the general manager of the Sylacauga plant. [Deposition, Joseph J. Gorman, *supra.*, pp. 78, 79]

3447 I. International advanced the money and purchased office furniture and other incidentals in initially equipping the plant.

J. Machinery which was the property of International was used for the installation of printing equipment at the Sylacauga plant. Such equipment which included lathes and grinders were returned to International in October 1961. [P-132]

K. When Dixie Color Printing Corporation, the wholly-owned subsidiary of Great Buffalo and now owner of the Sylacauga plant, was incorporated in 1957, Joseph J. Gorman, International's president, and Joseph Clinton, then an International employee, became respectively President and Assistant Secretary of Dixie Color Printing Corporation. [P-127]

Section 2, Sherman Act

36. At the time Greater Buffalo acquired International's stock, Greater Buffalo and King were competitors in the sale of supplement printing to newspapers. At the time of this acquisition, June 25, 1955, they were engaged in a conspiracy for Greater Buffalo to monopolize the printing of supplements and for King and Greater Buffalo to share in monopolizing the sale of such supplements to newspapers.

37. Greater Buffalo's purchase of International's stock on June 25, 1955 was accomplished pursuant to the aforementioned conspiracy with King.

A. King and Greater Buffalo had reached an understanding on or about June 13, 1955 that: [P-15; P-16]

1. Greater Buffalo would purchase International's stock;

2. King would enter into a long term contract with International;

3. The supplement printing which King would sell would be printed only by International or at the Greater Buffalo plant to be opened in Lufkin, Texas;

3448 4. Greater Buffalo would print only for King and for no other supplement seller; and

5. Greater Buffalo would print only for its existing accounts and would not solicit new accounts in competition with King.

38. The conspiracy in which Greater Buffalo and King were engaged, in June 25, 1955, began in or about 1954 when Greater Buffalo and King agreed not to compete for three newspaper accounts. [Tr. 232; 234; 235-6; P-13; P-70] Subsequently, King agreed to assist Greater Buffalo in opening the Lufkin plant by transferring all of its Texas runs to the plant. [Tr. 240; 242] Without such assurance Greater Buffalo would not have opened its Lufkin plant when it did. In turn Greater Buffalo agreed that King would receive 50¢ prM on whatever business Greater Buffalo would have already obtained upon the plant's opening. [Tr. 242; P-13]

39. The conspiracy which existed between King and Greater Buffalo to allocate customers, and to assist in the opening of the Lufkin plant, led to King and Greater Buffalo's agreement that Greater Buffalo would acquire International's stock.

A. At the period immediately prior to June 25, 1955, Greater Buffalo and King, through International, were the foremost

ellers of comics printed by comic printers. The managerial decisions in running each company were made by Frank J. Nicht of King and Walter Koessler of Greater Buffalo. Both sought to further the interest of their respective concerns. King's success in its sales of supplement printing was its sales organization and the entree its salesmen had to newspapers which were purchasing its syndicated features. King's copyrighted comic features were in great demand. Greater Buffalo, on the other hand, operated its plants more efficiently than any other comic printer, and was therefore able to offer lower prices to larger newspapers.

NEA Joinder and Participation

40. In or about October 1955, NEA joined the conspiracy between Greater Buffalo and King for Greater Buffalo to monopolize the printing and for the sharing in the monopolizing of the sale of supplement printing. NEA's joinder of the conspiracy resulted from Greater Buffalo's acquisition of International's stock. It was this event which compelled NEA to decide to sell its printing plant to Greater Buffalo, and arrange for Greater Buffalo to do the printing which was then being done by Greater Buffalo Color Press. This further increased Greater Buffalo's percentage of the supplement printing done by comic printers. [P-62]

41. When NEA learned that Greater Buffalo had purchased International it sought from Greater Buffalo the same printing prices that King was enjoying. It expressed to Greater Buffalo its concern over its inability to compete with King in the sales of readyprint. Greater Buffalo professed an inability to accomplish this and Greater Buffalo arranged a meeting between NEA and King for the express purpose of NEA and King entering into a no-compete agreement.

A. Although NEA had been discussing with Greater Buffalo the purchase of its subsidiary's printing plant, negotiations became more detailed and terminated only after NEA learned that Greater Buffalo had acquired International. [Tr. 1608-09; 1787]

B. In or about October 1955 it consummated the sale to Greater Buffalo and agreed that Greater Buffalo would print for NEA runs formerly printed at Buffalo Color Press. [P-27]

C. Implicit in this arrangement was the understanding that Greater Buffalo would not compete for these runs, but would pay NEA a sales commission. [Tr. 1763-64; 1777-79]

D. Greater Buffalo and NEA agreed that they would determine between themselves which new accounts would be allocated to either. [P-32; P-33]

E. At the same time NEA complained to Greater Buffalo that it could not effectively compete with King now that Greater Buffalo had acquired International. It requested 3450 Greater Buffalo to afford it the same prices that King was enjoying at International. In response Greater Buffalo advised that it could not change King's prices, and could not reduce NEA's prices, and told NEA that it would speak to King about this. [Tr. 1701-07; 1710-12]

F. Thereafter, Walter Koessler, President of Greater Buffalo, arranged for a meeting between King and NEA at the Beverly Hotel in New York City. [Tr. 338; 1710-12] At the meeting attended by Koessler, King and NEA agreed not to compete for or solicit each other's existing newspaper accounts. [Tr. 342; 1709]

42. Pursuant to the King and NEA no-compete agreement, NEA did not compete with King for the following newspaper accounts on the following dates:

1. The newspaper in Tupelo, Mississippi on January 11, 1956; [P-37]

2. On or about January 19, 1956 General Newspapers, Inc. Atlanta, Georgia; [P-36]

3. Jackson Mississippi State Times, March 21, 1957. [P-38; 39]

43. As a result of the foregoing conspiracy, among Greater Buffalo, King and NEA, for Greater Buffalo to monopolize the printing of supplements, Greater Buffalo was assured sufficient runs to justify the opening of its Lufkin plant in 1958 and of its wholly-owned subsidiary in Sylacauga, Alabama in 1963.

A. Having control of the printing for NEA and King by reason of the aforesaid conspiracy, Greater Buffalo was able to close International's Peoria, Illinois plant and transfer the printing to Lufkin. [P-59; P-137, par. 3; Deposition, Joseph J. Gorman, 1961, pp. 118-19]

3451 44. As long as the printing of supplements by Greater Buffalo is sold by Greater Buffalo directly to newspapers, and concurrently through syndicates and service organizations, competition between Greater Buffalo and such supplement sellers will necessarily be restricted.

A. Implicit in the relationship between Greater Buffalo and any of its non-printing supplement sellers is the understanding that Greater Buffalo will not solicit the supplement business of the newspaper for which it is printing pursuant to orders placed with it by the supplement sellers.

1. NEA would not place orders with any supplement printer unless it had faith that the supplement printer would not attempt to sell that account directly. [Tr. 1763-5]

2. By advising NEA that it wished to agree upon those new accounts which it intended to solicit directly, Greater Buffalo acknowledged that it was not considered a fair business practice for a printer to solicit business in competition with its supplement seller. [P-32; P-34]

3452 3. By forwarding to King a copy of a letter to a newspaper, then being serviced by King, that Greater Buffalo could not service its account directly, Great Buffalo acknowledged that it was not in active competition with King. Active competitors do not keep each other informed that they are unable to handle an account on any given occasion. [P-64; Tr. 988-90]

B. Greater Buffalo has the power to make it appear that competition exists between it and its supplement sellers while maintaining the sole power to decide whether to permit competition for any given account, restrict such competition or eliminate it.

1. On some occasions when King and NEA were in competition for particular accounts, Greater Buffalo determined which of the two would get the account by regulating the prices to be charged. [P-34; P-42; Tr. 1168]

C. So long as King and NEA have virtually all of their comic printing done at plants of Greater Buffalo or its subsidiaries (except printing done for West Coast newspapers), Greater Buffalo has an interest in maintaining the same price level at all its plants so as to avoid opposition by King or NEA to price increases or pressure by either of them for reduction in printing prices. [P-135; P-136]

1. King and NEA had virtually all of their printing performed at plants of Greater Buffalo or its subsidiaries [except printing done for West Coast newspapers]. [Tr.-1118; 3453 1798-99]

2. NEA constantly complained to Greater Buffalo about the prices it was paying Greater Buffalo for printing on the ground that it could not effectively compete with King which was enjoying lower prices from Greater Buffalo's subsidiary International. [Tr.-1656; 1698; 1702]

45. The divestiture of Wilkes-Barre and Sylacauga plants would be appropriate relief because such plants were acquired only because of Greater Buffalo's anticompetitive agreements with King.

46. The divestiture of the Lufkin plant is appropriate relief because Greater Buffalo was able to begin its operation only because of its anticompetitive agreement with King and NEA, and was able to commence successfully initial operations because of its ability to transfer to it runs from the acquired plants of International.

Section 3 Clayton Act

47. NEA, since at least 1954 and prior thereto, sold supplements to newspapers.

A. NEA as well as its main competitor, made arrangements to print such supplements with copyrighted features and concentrated in selling such readyprints.

1. Readyprints are supplements used by one or more newspapers in which the contents are the same, or almost identical, but for the mastheads or names of particular newspapers.

2. Comic printers in printing readyprints are able to spread the cost of makeready, or setting up the sections for printing among two or more newspapers. [Tr.-1593]

48. NEA, in 1954 and prior thereto, was a newspaper feature service or service organization, and as such made available to newspapers the rights for various features, including comics, which appear in the daily editions of newspapers. The number of such features made available varied with the type of service purchased. Thus the "Full Service" offered the maximum amount of features, while the

"Intermediate Service" made available a lesser number, and the "Pony Service" offered the minimum amount. [Tr. 1589, 1616]

49. NEA also sold or syndicated to newspapers, and offered to sell the rights for single or more copyrighted comic features which appeared in supplements. [Tr. 1799-1800]

50. NEA, since at least 1954, sold or offered to license copyrighted features, including comics, which appear in either the color supplements, or in the daily editions, of newspapers at lower prices or at no cost when such newspaper customers contemporaneously placed orders with NEA for the supplements.

A. Particular instances in which NEA offered such comic features at lower prices, or at no cost, were:

1. In or about August 1955, a newspaper located in Gary, Indiana, was offered supplements containing seven comic features. NEA, in making the foregoing offer, informed the newspaper that the licensing of the seven comic features, if purchased separately without the printing, would cost the newspaper \$40 per week. However, NEA, priced the supplement printing and comic feature rights as a combined single quotation. It indicated in its internal memorandum that the quoted price was based upon a charge of \$27.50 for the comic feature rights. [P-149; P-150; P-151; Tr. 1876-79]

2. NEA offered in or about December 1956, a newspaper in Albuquerque, New Mexico, one to three comic features at no cost, or extra charge, if such newspaper placed an order with NEA for printed supplements. [P-144; P-145; P-146; Tr. 1840-1842]

3455 3. In or about March 1957, NEA offered to sell supplements to a newspaper in Bend, Oregon, and offered to make available at no extra cost two comic features for inclusion in its daily publications. The newspaper had been using NEA's "Full Service," and such service made the two features available for its black and white editions. The newspaper had switched to NEA's "Intermediate Service" which did not make such comic features available. In the event the newspaper did not place an order for supplements licensing; such additional comic features for its daily editions were to cost \$5 per week. [P-152; P-153; Tr. 1893-97]

B. NEA obtained and sold supplements to newspapers, and

in soliciting such newspapers and thereafter made available comic features at no cost.

1. In or about September 1954, NEA contracted to do the supplement printing for a newspaper in Ponca City, Oklahoma. In contracting for such printing, NEA made available one comic feature at no extra cost. [P-154; Tr. 1898-1900]

2. In or about September 1958, NEA offered to reduce the charge for printing a supplement for a newspaper in Wenatchee, Washington, by \$27 per week. Such reduction in price was to permit the newspaper to purchase NEA's so-called "Intermediate Service" at \$27 per week. Thus, the newspaper, for the same price it had to pay for the supplement printing, obtained as a bonus NEA's "Intermediate Service." This gave it the right to use some comic features in its daily editions. [P-149; P-150; P-151; Tr. 1876-79]

3456 *Ultimate Facts, Section 7, Clayton Act*

51. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo on the one hand and the combination of International and King on the other, in the printing and sale of color comic supplements for newspapers which themselves did not print such supplements.

52. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo and King in the sale of printed color comic supplements to newspapers which themselves did not print such supplements.

53. Greater Buffalo's acquisition of all of the capital stock of International substantially lessened competition between Greater Buffalo and International in the printing of color comic supplements for newspapers which themselves did not print such supplements.

3457 PLAINTIFF'S PROPOSED CONCLUSIONS OF LAW

1. The printing and sale of color comic supplements to newspapers is a line of commerce and a part of interstate commerce within the meaning of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and of Sections 3 and 7 of the Clayton Act (15 U.S.C. §§ 14, 18).

2. Defendants engaged in commerce within the meaning of

Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

3. This Court has jurisdiction to determine whether the acquisition of International by Greater Buffalo violated Section 7 of the Clayton Act, and whether Greater Buffalo, Hearst and NEA violated Sections 1 and 2 of the Sherman Act.

4. Section 7 of the Clayton Act prohibited Greater Buffalo from acquiring all of the capital stock of International on June 25, 1955, for in the printing and sale of comic supplements for newspapers throughout the United States, which did not themselves print such supplements, the effect of such acquisition may have been substantially to lessen competition, or to tend to create a monopoly.

5. "The failing company doctrine" is ~~not~~ applicable to this case and did not relieve Greater Buffalo from the aforesaid prohibition against acquiring all of International's capital stock.

6. In violation of Sections 1 and 2, of the Sherman Act, on or about June 13, 1955, Greater Buffalo and King were engaged in a conspiracy for Greater Buffalo to monopolize the printing of color comic supplements for newspapers, which themselves did not print such supplements, and for Greater Buffalo and King to monopolize the sale of such supplement printing.

7. NEA joined the aforesaid conspiracy in the Fall of 1955 when it agreed not to compete with King, after having agreed not to compete with Greater Buffalo in the sale of supplements to newspapers throughout the United States. Thereafter, Greater Buffalo, King and NEA have been engaged in a conspiracy to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of Greater Buffalo, King and NEA.

3458 8. Greater Buffalo and King, beginning in or about January 1954, were engaged in a combination and conspiracy to refrain from soliciting color comic supplement business from each other's customers in violation of Section 1 of the Sherman Act. NEA joined such combination and conspiracy in or about November 1955.

9. NEA since 1954, has sold copyrighted comic features to newspapers at discounts, rebates, reduced prices, or at no charge on the condition, agreement, or understanding that such newspaper purchasers would not deal in the color comic printing supplements offered or sold by any competitor in violation of Section 3 of the Clayton Act.

[Caption Omitted in Printing]

Proceedings held in the above entitled action before
3459 the HON. JOHN O. HENDERSON, United States District Judge for the Western District of New York at Buffalo, New York, on December 17, 1969.

Appearances: LEWIS BERNSTEIN, ESQ., and ELLIOTT H. FELDMAN, ESQ., Anti-Trust Division, Department of Justice, appearing on behalf of the Government.

FRANK G. RAICHLE, ESQ., appearing on behalf of the defendant Greater Buffalo Press, Inc.

RICHARD F. STEVENS, ESQ., and SARGEANT KARCH, ESQ., appearing on behalf of the defendant Newspaper Enterprise Association, Inc.

3460 PROCEEDINGS OF DECEMBER 17, 1969, COMMENCING AT TEN A.M.

The COURT: Excuse me for being late. I had a visitor from Washington, in addition to our other visitors, that I had to see for a few moments. I hope you will excuse me for holding you up. I am ready to hear this.

Mr. BERNSTEIN: Good morning, Judge Henderson. At the outset I thought I would like to summarize the argument that the Government is going to present here. At first we will discuss the position that Section 7 of the Clayton Act prohibited Greater Buffalo from acquiring the stock of International. Then we will discuss the legal position that because Greater Buffalo was prohibited from making this acquisition, divestiture of the Wilkes Barre plant and the Sylacauga plant are the only appropriate relief for that kind of violation. Mr. Feldman will present those points to your Honor, and I will then present the reason why and the basis for the Government's demand for the
divestiture of the Lufkin plant, contending that the
3461 opening of the Lufkin plant was made possible by the illegal conspiracy between Greater Buffalo and King Features, and as part of that conspiracy the acquisition of International was involved.

The COURT: Let me ask you this. Now, you have talked about the Wilkes Barre plant, Sylacauga, and Lufkin. It is your position that all three of those they should be required to divest

themselves of, do you take the serious position that they should be back alone on lower Main Street as of now?

Mr. BERNSTEIN: No. That is why the next point I was going to discuss was that this is an equity suit, this is an equity action. The Court has the equity power to take into consideration the fact that fifteen years have gone by since these actions. Greater Buffalo has invested great amounts of money in improving the Wilkes Barre plant and in opening the Sylacauga plant, and in improving the Lufkin plant. Therefore, in order to do equity in this situation, the Government suggests to the Court that this Court has the power to order divestiture in a way that will do equity and not deprive Greater Buffalo of any of its property of investment, and that specific way—I will go into the details later on as to the way it can be done—I will present a concrete proposal as to how that equity can be done and still the Court can give the Government the divestiture relief it seeks.

The COURT: The way you first stated it it sounded to me like you were planning to go back to status quo, when Koessler was trying to make a better mousetrap, so to speak. That is not exactly what you have in mind?

Mr. BERNSTEIN: Absolutely not, that would be foolish, we move along, we don't go back. Part of the Government's proposal—I have to outline that to explain the next point—would be that the Court appoint a trustee, order divestiture of those three plants only at a current fair market value for those properties in the trustee's determination; if that property is not sold within one year Greater Buffalo retains it, keeps it, keeps on going; but in order to create a market for that property, in order to induce somebody to buy that, the Court will put a prohibition on that at the end of one year's time Greater Buffalo is prohibited from printing for King Features, it can go out and print itself and do its own selling or print for any other syndicate it wants or group of syndicates, but it can't print for King Features. This will create the market. Somebody knows when the properties are for sale there is a customer that is available, Greater Buffalo don't have that customer sewed up, the principal seller of color comics supplements.

I will go into more detail as to some of the prohibitions. Included among the prohibitions would be a restriction that Greater Buffalo need not print for NEA, despite its existing

contract with NEA, or it can elect to print for NEA or any other syndicate, but if it makes that election to print for a syndicate, it can't sell in ostensible competition with them, it can do one or the other, it can sell directly in competition with the syndicate or it can have the syndicate as its sales agent so everybody knows Greater Buffalo is the printer and the syndicate is selling the features, not selling the printing or doing printing, or it can sell to the syndicate as its customer and the syndicate will go out and do the selling of the printing.

This requires the imposition of some restrictions on NEA. The Court would ask why is it equitable or fair, where does the Court have power to impose restrictions on NEA. The answer is that NEA participated in the conspiracy with Greater Buffalo and King, and the conspiracy that we charge between Greater Buffalo and King is that Greater Buffalo was to monopolize the printing, King was to monopolize the selling, and this was enlarged to sharing the monopoly of the selling with NEA, so that the total conspiracy ultimately became the conspiracy charged here, that Greater Buffalo is to be the printer and King and NEA are to monopolize the sale of the printing.

Then after we discuss those points, we will discuss that the defenses that have been raised in this case have no merit. It would be clearly erroneous, even if we accept the position of the defendants, it would be erroneous not to find Section 7 was violated or that Greater Buffalo and King engaged in this conspiracy to monopolize the printing.

The COURT: Let me ask you; you say there was a conspiracy to monopolize two things; the printing by Greater Buffalo, and the sales by King and NEA. Now, in order to make a finding of that kind; what is the greatest thing that you rely on, Nicht's story?

Mr. BERNSTEIN: The greatest thing that we rely on is Mr. Koessler's testimony, Mr. Koessler's letters, supplemented by Nicht's testimony, consistent with Nicht's testimony.

3466 We are relying on Koessler's testimony and Koessler's letters for the evidence of that conspiracy.

The COURT: You don't think Koessler's letters, in your judgment, could be interpreted in any other fashion than an attempt to form a conspiracy?

Mr. BERNSTEIN: That is correct. It is the Government's position that it would be clearly erroneous for this Court to find, when he reads Koessler's letters, plus his testimony, that is, the whole testimony, direct and cross-examination, that there is any other finding that could be made but that there was a conspiracy that Greater Buffalo was to be the exclusive printer, King was to be the exclusive seller.

Now, to be perfectly candid with the Court, the Government doesn't take the position that it is clearly erroneous to find that NEA participated in that conspiracy, then there is a discretionary fact, the Government says the Court may find that, there is substantial, sufficient evidence, there is more 3467 than a preponderance of evidence from which the Court could find that NEA joined in that conspiracy, but we couldn't say it would be clearly erroneous if the Court found otherwise. As to the former, yes.

The COURT: The reason I ask these questions, I knew you were coming, but I have not had the slightest opportunity to review the evidence, and I am calling now on certain recall that I have, particularly of Nicht and, of course, you jogged my memory about a series of letters, and you jog it again with the testimony of Mr. Koessler. But the summary of what you say is that in your judgment the combination of those establish a conspiracy——

Mr. BERNSTEIN: That is correct.

The COURT: ——to create this monopoly?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: We will then finally discuss the Government's request for an injunction against NEA, the same type of injunction that now exists against King, to prohibit NEA from selling ready print as a single unit unless it lists specifically the prices for the printing and the prices for the 3468 features, so that the newspaper knows that when it is buying a package or single unit price how much it is paying for the printing and how much it is paying for the features, so that NEA can't use its power over copyrighted features to induce the sale of the printing.

The COURT: That restriction that you just described was a consent restriction, was it not, between King and the Government?

Mr. BERNSTEIN: It was.

The COURT: That was when General Brownell was in the picture?

Mr. BERNSTEIN: That is correct.

The COURT: That was not part of the Court's findings, that was a consent matter?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: So with the Court's permission, Mr. Feldman will present the first two points, that the acquisition is prohibited by Section 7, and that the divestiture of the Wilkes Barre and Sylacauga plants are the only appropriate relief for that violation.

Mr. FELDMAN: May it please the Court; the Government contends that in June 1955 Greater Buffalo purchased all the outstanding stock of International, that that act was prohibited by Section 7 of the Clayton Act, and hence Greater Buffalo was in violation of that act. Now, we say they were in violation of that Act irrespective of any of the conspiracy charges that Mr. Bernstein will subsequently refer to. This prohibition makes only Greater Buffalo guilty of Section 7 of the Clayton Act, and does not involve NEA. We think before we can get into the present structure of Section 7 of the Clayton Act, it might be best to go back to the predecessor act, that is, the act of 1914 and what that was about.

The original Clayton Act, that is the parts we are referring to, was an aftermath of the old Teddy Roosevelt era, where the Government was going after the so-called trusts. After while it developed that many of the trusts were using holding companies. Many of the acts relating to the holding companies were not in themselves violations of Section 2 of the Sherman Act, and so this part of the Clayton Act was passed to arrest and stop those practices before they became what they considered Section 2 of the Sherman Act violations. However, after the Act was passed there was certain deficiencies in the Act as far as its application was concerned.

First of all, the Act only applied to stock. What would happen or what did happen when a corporation acquired the assets of another corporation and didn't acquire the stock? Well.

there were rulings, at least by the Federal Trade Commission, at that time that the Act wasn't applicable in such a situation. Then the next great deficiency that took place was that the Act was deemed only to apply to the so-called horizontal mergers. That is the nomenclature given to a particular type of merger where you have one competitor buying another competitor. There were rulings at that time holding that other

types of mergers were not covered by the Act. For example, let's say that a supplier bought his biggest customer, he is a large, dominant factor in the industry, that wouldn't be covered by the old Clayton Act, at least Section 7. In addition, compounding a lot of the confusion, the Act itself had some words which gave the courts a lot of trouble. They used the word "acquiring", they used the word "acquired", and because of that the courts felt it was very specific in its application to particular situations.

Subsequently, that is, in 1950, the Act was amended to its present language. While it may be an imposition to read the statute to the Court, we can only submit that certain parts of it become very important in the development of the case law, so I will take the liberty of reading those parts now. The Act, as to certain parts, says:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock of another corporation engaged also in commerce where, in any section of the country, the effect of such an acquisition may be substantially to lessen competition or tend to create a monopoly."

After that, I am talking about the 50's, there was a flurry of litigation instigated during the Eisenhower administration. Many of the cases were settled, but in the other cases which were not settled problems developed, and they were practical problems, as far as the trier of the fact was concerned in the trial court. To begin with, you had certain elusive language, for example, "may be substantially to lessen competition or tend to create a monopoly." You had defendants coming into court out of the so-called jungle warfare of industry and they would tell one side of the story. Of course, like all litigants, it was partisan. You had another impediment, as far as the Government was concerned, you had economists testifying

and they tended to be somewhat academic, subject to one fallacy, they never were called upon to meet the payroll in the industry under scrutiny.

3474 Now, in those cases the court was asked to play the part of a King Solomon and decide what "may be substantially to lessen competition or tend to create a monopoly." It is in that background that we have the subsequent cases from the Supreme Court. Now, in reading these cases that came down from the Supreme Court, certain basic questions had to be answered. For example, when we talk about "substantially lessen competition" under the statute, what does the Act refer to in line of competition? Does it mean any type of competition? Does it mean competition resulting from a particular set of circumstances? It is important to do this without using the word "competition" in your definition, otherwise you go around and around in circles.

Then the next question that had to be answered was what type of judicial inquiry would be permitted here, how far can a trier of the facts go? Was he to get involved in details of the industry, and concern himself with potential competition in the industry, concern himself with what the future of the industry might be, and things like that? Then, of course, the question had to be answered, what is meant by the phrase "where in any section of the country," what does that mean? Going to the last matter first, namely, the question about "where in any section of the country," that was disposed of rather quickly. The courts have resolved that it can be any geographic area where the particular economic activities under attack are being carried on. For example, in the Pabst Brewing case the area was confined to three states: Wisconsin, Michigan and Illinois. We submit that in this case here there is no problem, and that is because the geographic area is the entire country. We have evidence adduced here, even the defendants under their own direct examination stated they have sold supplements from the east to west, you have International selling out in the State of Washington, and all parts of the country. So this Court, we submit, need not concern itself with a geographical area.

3475 Now, the next problem that came up, this is in connection with the judicial trier of facts was called upon to make, what type of market are you concerned with

here, namely, what product is involved, how broad is this market going to be that is going to be judicially scrutinized? In this case there could be several types or lines of commerce, as far as the specific market is concerned. You could have, one, all printing throughout the country, and that would include printing done by newspapers themselves, in addition to independent color comic supplement printers. Then you could have printing of supplements just done by color comic printers, and only for newspapers which do not print their own. Then you could have a separate line of commerce consisting of the selling of the supplements, just the selling. We say the most logical type or relevant market area here is the combined printing and selling supplements. We say the printing in such a relevant market would be done by color comic printers. Just
 3476 in passing, I could note the defendants have contended that in such a market those newspapers which print their own supplements would be included.

Now, irrespective of that, as far as Section 7 of the Clayton Act is concerned, the courts have held that one of the purposes of the Act was to arrest certain types of concentration, namely, economic concentration, and by that they mean one corporation taking over another corporation, and since many of the acts prohibited may not involve or reach the magnitude of a monopolization case, in such cases the court may consider what it considers a sub-market, and if a court finds there are peculiar characteristics of a market, such as unique production facilities, distinct customers, or specialized features, then the trier of facts can find that for the purpose of Section 7 of the Clayton Act there is here a sub-market. We maintain there is such a market here, either it be as a sub-market or part of a much larger market. We further submit that the Court need not
 3477 concern itself with the outer products limits of this market, it may be a sub-market or it may be the entire market.

The COURT: Let me ask you something. Basically, I assume, that all these acts had a purpose, and that was to get a product to the public at a fair, competitive price, it never worried about, I think, basically, about a competitor being squeezed a bit, the purpose was to see the public got its requirements at a competitive price, isn't that correct?

Mr. FELDMAN: I would say that would be a very ultimate goal, they were not directly concerned with that.

The COURT: Let me ask you something, trying to jog my memory, was there ever anything in this case brought to my attention of a disappointed consumer of these goods, who brought to my attention that they had been hurt by whatever Greater Buffalo was alleged to have done?

Mr. FELDMAN: No, sir, there was none.

The COURT: Isn't that the key consideration?

Mr. FELDMAN: No, sir, we submit it is not the case
3478 here.

The COURT: Isn't that what the efforts of Teddy Roosevelt were directed at, the consumer?

Mr. FELDMAN: Originally, yes, but here's the problem that happened here, as far as Section 7—now I am talking about Section 7—that Act is only concerned with what is considered competition, nothing more. They were concerned with the economic concentration. In a particular industry you get two or three companies buying up the others and becoming the largest. The Act doesn't attempt to go into what flows thereafter, when you got two or three companies running the show, it presupposes in the long run——

The COURT: You claim they are running the show?

Mr. FELDMAN. I say there is a violation because of Section 7 here, yes.

The COURT: Do you say right now that Greater Buffalo and its acquisition are running the show?

Mr. FELDMAN: I don't know exactly. I would say to a large extent, yes. Yes, I would, they have to by the mere acquisition itself. They have to, that flows. The Act doesn't say that you should have to show that; it may tend. You are talking
3479 about may over here, that is the criteria used. Let me digress and give you one case that happened——

The COURT: Let me ask you right now, you say it may tend to have a monopoly, what can you point out to me that has resulted from the early beginnings of Greater Buffalo, the acquisition of International, the Sylacauga plant and Lufkin, that in your judgment has in effect lessened competition and hurt the consumer?

Mr. FELDMAN: I can't go that far. The Act does not require me to do that. Let's——

The COURT: Isn't that what I should be concerned about?

Mr. FELDMAN: No, sir, not under Section 7, no, sir. Let me—to answer the question, let me at least put up one of the charts used in the early proceedings—

The COURT: This thing hasn't been going on just for a year, it has been going on quite a while. I would be concerned as to who is aching as a result of this alleged violation of law. You say that is not important?

3480 Mr. FELDMAN: Not under a Section 7 violation, we are not concerned with that at all. Before getting into the facts over here, I better—I would like to call your Honor's attention to one case, it may clear it up somewhat.

Your Honor may recall the Dupont case. That was the case where in 1917 to 1919 Dupont went out and bought 23% of the shares of stock of General Motors. General Motors at that time only had 11% of the market. That took place thirty years before a suit was commenced in 1949 by the Government. This is what they call a vertical monopoly, in the sense Dupont was a supplier buying part of the stock, the stock of its customer. At the time Dupont bought the stock they undoubtedly envisioned General Motors might grow, sort of an investment, they also were a supplier—

The COURT: What was the product, what was the unique product?

Mr. FELDMAN: The product here was finishes for automobiles and fabrics. There is a Duco lacquer put on the automobiles—

The COURT: Unique?

3481 Mr. FELDMAN: Unique in the sense—let me say this, Dupont probably had about three point something percent of the whole country—

The COURT: There is nothing unique about Koessler's operation except that he did it well?

Mr. FELDMAN: There is plenty unique about it.

The COURT: What is there about it? He made a better press? I remember there was a lot of talk about overprinting the old funny papers, they used to have Captain Katzenjammer half green and half red, and all Koessler ever did was to get that polished up so it didn't do that, and turn it out twice as fast. He has no patent, has he?

Mr. FELDMAN: No, no patent. Let me say, this is a typical type of color comic supplement known to everyone.

The COURT: Anybody can print that that can get Koessler's skill and a press of his quality.

Mr. FELDMAN: Originally, yes, not now anymore.

The COURT: Why?

Mr. FELDMAN: Because the very nature of production, this was based on old printing presses, and Koessler happened to be very bright——

The COURT: Is he supposed to be penalized for being 3482 bright?

Mr. FELDMAN: No, this is directed to the question of whether this is a specialized type of printing, and it is. For example, here are other types of printing, it is probably an offset type of printing, it is more expensive, it can't compete. It is completely different. It takes a specialized skill to turn this out as a comic printer and go around and sell it to newspapers. In order to sell it to newspapers it means you got to make it cheaper than they could. The whole industry—this is the industry he developed through his skill and know-how. It meant buying presses, these were old Black and White presses—it meant holding onto them a number of years, not too many around at the present time, a lot of them were bought from Hearst. In fact——

The COURT: A lot of them he bought, as I remember it, were old, virtual junkers.

Mr. FELDMAN. Right.

The COURT: Junkers in Wilkes-Barre, and by reason of know-how he made them functional.

Mr. FELDMAN: That is correct.

3483 The COURT: Is that wrong?

Mr. FELDMAN: No, it is 100% right. In addition to that, it takes ingenuity to take an old press and look around for other equipment and use that in conjunction with that and build something out of the thing. These presses are used for color comic supplements——

The COURT: Wait a minute. Today if there is another Koessler in the United States can't he do the same thing?

Mr. FELDMAN: It would be extremely difficult.

The COURT: Because there are not many Koesslers?

Mr. FELDMAN: Yes, sir, number one. Number two, it would be much more difficult. If you look through Editor and Publisher, there are not many old presses around.

The COURT: Can't they make a new press?

Mr. FELDMAN: It is very expensive, that is the whole point. You have——

The COURT: I may be missing something. I probably am.

Mr. FELDMAN: Suppose I go back to the——

The COURT: Maybe I am off the track.

Mr. FELDMAN: I think I would probably answer your question more satisfactorily by explaining what happened in that case. Now, they had——

3484 The COURT: Wait, "that case", you are talking about Dupont?

Mr. FELDMAN: That is correct.

The COURT: Which had a peculiar ability to produce a certain lacquer, isn't that right?

Mr. FELDMAN: No, it was not. They said other people could do the same thing. Just the fact they had this product on the market, they were selling it, that made it unique, it was different. Other people were not in it for some reason or another.

The COURT: I remember those days. That is the time when you got this kind of a finish that you didn't have to simonize and rub wax on, that was the beginning?

Mr. FELDMAN: That is right. Yes, sir, that is right. The point was the other people decided not to go into that, they didn't find it profitable or some other reason. Here was something that took place thirty years before a suit is brought, and I might say this during this time, the court found, at least the Supreme Court found that there was no complaint upon the service and upon the product that was sold to General Motors.

3485 The Court also found there was no instances where discrimination was used against other suppliers in favor of Dupont, none of that was found. The only thing the Court said was because of the interlocking, in some cases, of directorships taking place, on one hand a director of Dupont becoming a director thereafter of General Motors, and also the ownership of stock, because inquiries were made to try to get more of General Motors business that there was an inference during the years Dupont sold many of its products because of its position as a stockholder of General Motors.

The COURT: But Koessler and Greater Buffalo never owned a nickel's worth of King stock——

Mr. FELDMAN: Before the acquisition, no, that is right.

The COURT: Nor NEA?

Mr. FELDMAN: No. The only point I am getting at, your Honor, you had questioned about the consumer.

Mr. RAICHLER: In that connection, it isn't claimed that Koessler or Greater Buffalo ever owned a dollar's worth
3486 of stock in the newspapers, either.

Mr. FELDMAN: That is not an issue.

Mr. RAICHLER: In line with the Judge's observations.

The COURT: Here is what I am talking about; I can see where if you have got an automobile finish, whether you have a patent on it or not, you deal with General Motors, the biggest producer of cars in the country, you own stock in it, and that is the only manufacturer that is going to get your product, that is kind of a tie-in thing. It is like the alleged tie-in in a patent case I have here where a windshield wiper is involved, you tie the arm in and sell it only as a package, then you are in trouble. Now, all Koessler had is a skill. Isn't it like—you have heard of Kittinger here, the furniture people, they make a quality, number one furniture, and I assume in that quality line they have very little competition; and somebody else makes a piece of furniture down south that falls apart in a year when it gets in a hot room; that is an inability to compete with Kittinger because the skill isn't being employed. You are

3487 talking about a product tied in to two corporations, that is this lacquer, a real tie-in, as against a person who has a skill, wants to expand, wants to make his product more available and perhaps cheaper to the consumer, and he does this, and by reason of it, somebody who isn't as skillful is squeezed a bit, let's say. That is why I ask you the question, can you point out a consumer that is hollering?

Mr. FELDMAN: No, sir, there never are any, in Section 7 there never are any consumers hollering, that is not the test of the case. The test is only competition and the elimination of this competition which flows from only one source, economic concentration in any industry or sub-market. The courts have said thereafter the consumer gets protected, it doesn't get involved in that at all, this is only a particular segment of the anti-trust picture.

The COURT: Because it is there does not mean I have to find that from the facts you describe.

Mr. FELDMAN: I am submitting that there is a sub-
3488 market. That is something you don't have to find unless
you find the facts support such a conclusion.

The COURT: Aren't you basically interested here in John Doe,
the consumer?

Mr. FELDMAN: No, sir.

The COURT: You brought this lawsuit; aren't you basically
trying to protect the cost of a newspaper in the hands of John
Doe?

Mr. FELDMAN: Only as a second step. As far as Section 7—

The COURT: I am talking about your ultimate step.

Mr. FELDMAN: I would say that would take place if you have
competition in a market and there are no impediments in this
market, ultimately the people handling it themselves, you
would get a better product and pay less in the long run. The
only thing this Act does come along and say, "It is much like
a game, you can go out and compete, this is one rule, you vio-
late this rule and we step in, you got to start over again or start
playing again." That is the only point that is involved.

The COURT: All right.

Mr. FELDMAN: Now, in talking about this specialized
3489 market, we heard, and our brief refers to it, in deposi-
tions also, the testimony of Mr. Gorman and also Mr.
Koessler. Mr. Gorman testified both at trial and also his deposi-
tion how in the 20's and 30's he went, on behalf of Interna-
tional, and bought these old presses, and what he did with the
presses, he stocked them away for some future use. At the same
time Mr. Koessler of Greater Buffalo did the same thing. They
used their skill in making these presses adaptable for color
comic supplements, that is, employing four colors, and all we
are suggesting is that all people in the United States who are
color comic printers, engaged in this business of printing or sell-
ing such supplements, are engaged in a type of endeavor which
can be seen to be distinct from other types of printing. That is
our suggestion, that is what we submit is the fact in this case.
In addition to that, when it comes to sales—

The COURT: Let me ask you; I don't remember Gorman, I
remember something about buying a press from a news-
3490 paper in Baltimore.

Mr. FELDMAN: That is correct.

The COURT: That is what you are talking about?

Mr. FELDMAN: Those type of presses, yes, sir.

The COURT: That Baltimore outfit was done, that was a piece of surplus in their hands?

Mr. FELDMAN: Yes.

The COURT: Wasn't it a Baltimore paper?

Mr. FELDMAN: Yes. That was Press 2055. That is the one that was constructed, bought, taken to Wilkes Barre, worked on, and ultimately shipped to Sylacauga. That was one such press. In that instance it was a very large press; half was bought by International for eventual use at Sylacauga, and the other half was bought by the company—

The COURT: That is what you claim it was bought for. What is the proof of that, that it was bought for Sylacauga?

Mr. FELDMAN: There is no problem on that, your Honor. I think that is admitted, that it was going to be used at Sylacauga. The only dispute we had was as to who did the work on it, who paid for it. I think it was agreed it was going to be bought.

It was improvised according to broad specifications of 3491 Greater Buffalo. We say the work was done by Wilkes Barre. This consisted of the use of—resulted in bringing about greater flexibility.

The COURT: From a consideration of anti-trust, you may say standing alone that is not sufficient, what is the significance that you want to urge upon me of the purchase of that surplus piece of equipment from some newspaper in Baltimore?

Mr. FELDMAN: Nothing as far as the initial violation is concerned. It has to do with Sylacauga. As far as the initial violation, the press there has nothing whatsoever to do with it. The only thing, it is the type of activity the people do in this type of industry, it is sort of a specialized industry. The other part of the press was bought by the fellow down in Newport News, and they improvised in their way that particular press.

The COURT: That remark, I'm sorry, but you said it is significant of the kind of thing that people in this business do, that is, specialize?

Mr. FELDMAN: That is right.

3492 The COURT: What is wrong with that?

Mr. FELDMAN: Nothing wrong with it, absolutely nothing. It is a very good American tradition, doing that.

The COURT: All right.

Mr. FELDMAN: All I am saying is the fact they did it in this way makes them distinct and separates them from other people in the printing business. There is nothing wrong, there is no stigma attached to that.

Now, in regard to this market we are talking about, we say it is also distinct because even on the selling end, and we get the testimony of one of NEA's officials that even selling these supplements involves a sales engineering job, in other words, you have to have special knowledge to sell it to the newspapers. To begin with, you can't be an order taker and say, 'I am going to sell you this.' These are tailor-made items, to begin with there is a masthead for the particular newspaper, and the seller who is coming around has to know what the make ready charges are going to be. You have to know
3493 what flexibility is involved. Suppose the man or the newspaper says, 'I want eight standard pages,' and the seller knows that that would not be practical, he has to induce him to take six standard pages. He has to know from the printer what the transportation costs are in the business. In other words, he has to know—in addition to that he would have to know the quality of printing, for example, that the particular customer wants. These are many of the considerations that would take place. Now, aside from determining what is the market we are talking about, and there is no stigma or ill finding in saying that the market is this or the market is that, it is unique, we claim, in this case, to be identified as the sub-market.

Now, in addition to that, the Court has to find out before he even analyzes what took place, who the people in this market or sub-market we are talking about are, what is the relationship of the parties involved here. Now, we say—this, by the way, is one of our oldest charts that we used in the prior
3494 proceedings, we are using it to reacquaint you with the names of people in the industry. We say in 1954 these were some of the printers. This was International, this was Greater Buffalo, this was Buffalo Color Press, and that was a subsidiary of NEA right here in Buffalo, that went out of business subsequently in 1955, in the latter part; and there were other printers throughout the country, you had Southern Color-print in Newport News; Eastern up in Connecticut, then—

The COURT: Wait a minute. That Buffalo Color Press formerly owned by NEA was a dead horse when Koessler got it?

Mr. FELDMAN: He never—he bought part of the assets.
The COURT: It was really a dead horse?

Mr. FELDMAN: Yes. I am pointing out what was in the industry, the people in the industry. Greater Buffalo not only printed color comics supplements but also sold these color comics supplements. Then, in addition to that, it sold them through some syndicates for newspapers. In other words, the syndicates would go around and Greater Buffalo would supply the supplements to the particular newspapers, but there were direct sales in many cases. In fact, the great rise of Greater Buffalo came from going out and soliciting directly newspaper customers. Now, International, in turn, didn't solicit or approach customers, it went through King. This was the main difference between the setup of International and King on the one hand and Greater Buffalo on the other hand. Greater Buffalo was a single, integrated outfit, doing printing and selling, and International and King, on the other hand, we claim, economically and functionally was one outfit, they were two separate corporations. Now, we say the two really should be looked upon as one, economically, for the following reasons. International—well, look at the supplements here—

The COURT: Why should they be looked upon as one? They dealt at complete arm's length.

Mr. FELDMAN: Who?

The COURT: King and International.

3496 Mr. FELDMAN: No, sir, they did not, we say not. When you say they dealt at arm's length; King entered into contracts with International beginning in 1925, they agreed under this—or International agreed to supply all its supplements for King's customers. Now, in this business—

The COURT: At a price.

Mr. FELDMAN: At a price. Everyone is making a profit, I assume, all doing it for a price. Now, in the printing of these supplements it is much unlike this ballpoint pen I hold; a manufacturer or printer whoever it is, can make a pen like that and take it and stack it away and maybe a month later you can give it to a distributor or you could go out and sell it to any customer or wholesaler, but in this case, there is no such sequence of events. When International makes this supplement, it makes the supplement pursuant to a request by King

to service a particular newspaper customer. Generally the supplement, when it is printed, will be shipped to the newspaper five weeks in advance. That newspaper when it is printed according to a specific demand can never be used by anyone else, it is a tailor-made job.

In addition, International, much like the other printers, is the one that makes the original arrangements for the transportation, and that is a very important factor, your Honor may recall from our prior proceedings. In other words, he gets in touch with a trucker and decides the cheapest way to do it and so forth. There are other things that International does and did during the years.

When King was facing competition they would call upon International to lower the price, saying this was called for in the competition. There was a continuing joint venture on the part of International and King. In fact, Gorman testified that in forty years he practically every day had a telephone conversation with Nicht about some matter or another. In other words, International was not any subcontractor of King, it was a joint venture on behalf of the two of them. Together International and King, International doing the printing and King doing the selling, were performing the joint economic activity that Greater Buffalo was engaged in. That was one part of the market. There were other significant color comic printers throughout the country, I mentioned some of them before, but the point was that, as far as the printers were concerned—of course, NEA was in the picture also—as far as the printers were concerned these were the two largest, International and Greater Buffalo. We say in looking at any market at all, in scrutinizing it, particularly when an acquisition takes place, the determining factor is the percentage acquired by the acquiring company through the acquisition.

In determining what the percentage is, there are various ways of going about it. One way may be for the Government in cases of this type to get independent surveys, go around and just find out who is printing for whom and what the volume of that printing is. Generally, any type of prepared surveying of this type is tainted, in the sense everybody knows it is going to be used for litigation. In this case we did something we thought was better, and better in the sense it was not prepared for litigation, that was what we called

and referred to in Plaintiff's Exhibit 61, Gorman's ready print survey. This survey consisted of the following:

Every year Gorman, as a businessman now, I assume without regard to any litigation, would get in touch with all newspapers, that is, through the mail, in the country which sold color comic supplements and ask them, one, the size of their supplements, who printed it, and on the basis of that compiled for his own use a survey of the entire country. It went by states, it went by cities, it was broken down as to which printers were printing for whom, what the circulation of the particular newspapers were, and the volume involved because of the standard size of this newspaper.

Now, originally we took this survey, this is the year 1955, this has been admitted in evidence, and we compiled 3500 through our computation some figures as to people in the industry and what they were printing. We used as a basis for that so-called four page standard, because that is what Gorman used in his survey. Here is what we mean by a four page standard. This comes out of the press as four pages, one at a time, and it is assembled later. That would mean if a newspaper had a circulation of ten thousand and they were using just a four page standard, the circulation in terms of color comic supplements would be ten thousand, and if they had an eight page standard, the circulation would be twice as much, twenty thousand. You don't have to use a four page standard, I think through the record Greater Buffalo has used an eight page standard, it doesn't make any difference, but Gorman, what he did in the case of Greater Buffalo, he reconverted, and this is the method that when we say there is a circulation in terms of four page standard, that is exactly what we mean.

On the basis of the facts which we submitted, Greater 3501 Buffalo in turn came in with figures and said you are wrong here, these are not accurate, and we offered that at the trial in evidence for the purpose of showing what the correct figures are and we accepted that for the purposes of this trial. Here is what the figures show in regard to Plaintiff's Exhibit 61 and also 62:

To begin with, Greater Buffalo had a circulation, in terms of four page standard, of close to 27 million fours. International had slightly over 27 million fours, so I guess they were on an

equal plane. In addition to that the other independent color comic supplement printers had amounts which were much less. In fact, Gorman in 1956, in describing how International fared and how Greater Buffalo fared, said that between the two of them, Greater Buffalo and International, they produced over 63 million fours per year. That 63 million may include Canadian accounts, perhaps at that time also included some

3502 Mexican and Cuban accounts, these were not included in the final figures. Then he went on to say—Gorman was the same individual who was extremely well-informed in the industry, he went around visiting all the plants, so he testified, and he knew the printing facilities of the various independent printers, and he also knew their capabilities—he said no other printing company—and I am quoting now from Plaintiff's Exhibit 1—produces more than 6 million weekly, and he is talking about four page sections there, and it is safe to say that the extra capacity now in reserve in other plants cannot print more than a fractional part of the supplements now produced by International.

Now, when International does 27 million fours and Greater Buffalo does 27 million four, 27 million four page sections, and no other printer could do more than six million fours, that represents a high percentage in terms of volume production.

3503 Now, this part of the Act isn't concerned with what they did, how they developed that, we assume that they did it by know-how and competition, in the case of International's original investment, but when you have people with a high percentage like that and Greater Buffalo purchases International, that act is illegal, that is what the Act is concerned with, this concentration that comes about because of Greater Buffalo buying International. Your Honor may say, well, look, the annual revenue of Greater Buffalo was only about eight and a half million, the same applied to International, that is not too much if you go into the oil business or the automobile business, we are talking about an industry where eight million may be a lot, as far as the other printers are concerned, any other printers around did only a small fraction, at any rate, never approached 6 million fours, while these two large companies were doing 27 million fours and perhaps even more, according to Plaintiff's Exhibit 1. We further say that on the basis of those statistics, based upon this specialized market we

3504 are talking about, this represented 75% of the volume of production by independent color comic printers. We further say that if you include in that market, the broader market, newspapers which print their own, this would represent 40% of such a market. We maintain in either case that it is bad and it is prohibited by the Clayton Act.

Now, in determining the weight to be given the percentage figures in any market, the Court in *United States versus Philadelphia National Bank* said, and I quote part of it: "Without attempting to specify the smallest market share, which would still be considered to threaten undue concentration, we are aware that 30% presents that threat." All the Court is concerned with, as far as the Clayton Act is concerned, is this concentration, nothing more. It goes on the assumption that if you don't have concentration——

The COURT: Was that a banking merger?

Mr. FELDMAN: Yes, your Honor, in the Philadelphia area.

The COURT: You don't see any distinction?

3505 Mr. FELDMAN: No, sir, none at all. In fact, in this industry *International and Greater Buffalo*, in rank, had a much greater share of the market than in this case.

The COURT: You don't see any distinction in banks merging and printers of newsprint merging?

Mr. FELDMAN: No, sir.

The COURT: You say the fundamentals are the same?

Mr. FELDMAN: The fundamentals are the same, sir.

The COURT: All right. Of course, banks have to be chartered by the sovereign, don't they?

Mr. FELDMAN: Yes, that is right.

The COURT: They are not easy to come by.

Mr. FELDMAN: That is right.

The COURT: There is nothing to stop another printer from incorporating or going at it, is there? Is there no difference in your mind at all?

Mr. FELDMAN: No, sir, in basic principle, when the case comes to a court under Section 7 of the Clayton Act that is not a consideration at all, that is——

The COURT: I want to look at that. You have been with that kind of thing much longer and been more involved than I have

3506 but—in other words, you are telling me in substance that a court faced with certain percentages of a market must find a violation?

Mr. FELDMAN: Yes, sir. Yes, sir, that is what I am saying. I am further suggesting, your Honor, that other considerations—

The COURT: You mean if there is nothing else, just the percentage found, no other consideration? Nothing unique about the type of business involved or anything else?

Mr. FELDMAN: I would say basically this is the fundamental thing.

The COURT: You cited two cases to me; one, Dupont had a special product on the market, they are tied in stock-wise to the biggest consumer in the country; and the other case is a bank merger where there is a peculiar requirement to bank at all, that is, a charter, under strict and limited—they are not issued every day. None of these things make any difference, in your opinion?

Mr. FELDMAN: No, sir. There may be certain impediments to being incorporated.

The COURT: That is not going to interest me at all. You get incorporated by filing a certain set of papers and paying
3507 a fee, and as long as you don't take the other fellow's name, you are in business.

Mr. FELDMAN: All I am suggesting, your Honor, is that the requirements to be met to become a bank are not necessarily the factors that are concerned in Section 7.

The COURT: That is all I asked, whether there isn't some distinction in the type of mergers you are talking about and the commercial mergers. Look, I am looking for education on this subject—

Mr. FELDMAN: I understand that.

The COURT: Because you have been with it, I have not, I know a little about it, but the things you cite to me, on the face of it, have a little inkle that is not common here, I am trying to find out about that.

Mr. FELDMAN: There are other cases cited in our brief, and I will refer to another called the Brown Shoe Company case that citation is 370 U.S. 294, decided in 1962. In that case you had one shoe company, namely, Brown, engaged in the production of shoes and also in the retail outlets of shoes going
3508 ahead and buying another company called Kinney, and the retail outlets of Kinney, that is, on terms of sales throughout the country were one point two percent, and their production in terms of throughout the country was even less,

considering it on the percent basis. There the court did find that Brown, that is, the acquiring company, in terms of production was the fourth largest in the country. They found there two types of mergers; one, the horizontal, between competitors, and also the vertical. By coming into this Brown would be able to use their production through the retail outlets of Kinney in disposing of their shoes. Now, true, the market is much larger there, and in talking about the market it was contended originally what you are talking about is footwear, and the court said, no, there were three markets; one, men's shoes, they found a distinction, and women's shoes, and there were children's shoes. In other words, three separate markets. Obviously someone making children's shoes could make men's shoes. They said no, they go about it in a different way.

3509 Whatever the reason, we are not interested. They broke it down into three types of market. To me it is similar to what these printers do in color comic supplements. There is nothing wrong about that, they are very unique, really people that show a tremendous amount of ingenuity both in the selling and also in the production end of it. Calling it a sub-market is a recognition you are giving them, saying these people are a little different than the next fellow, that is all.

Now, we say that once you find the percentage market, divestiture is mandatory under this Act, because you are not concerned in considering directly in this case what happened to Consumer A or B, all you are concerned with basically, as a trier of facts, is this economic concentration that took place, and the purpose of the Act is when you have a certain economic concentration that there automatically flows a substantial lessening of competition.

The COURT: What is the formula, when does that occur?

3510 Mr. FELDMAN: The reason I mentioned the Philadelphia case, they say when you have 30%, it is very suspect.

The COURT: Is that true of all industries?

Mr. FELDMAN: I would say most of them, it may vary.

The COURT: There must be a reason for the taboo. What is the reason for the taboo, you talk about economic concentration?

Mr. FELDMAN: That was the purpose of the Act.

The COURT: I know, but what is the reason, what is the underlying reason?

Mr. FELDMAN: The underlying reason is when you have this type, what we consider economic concentration, eventually after—first of all, competition is eliminated, they say it becomes—in other words, take this case over here—

The COURT: What are you urging me to do, find like a formula that 30% equals violation?

Mr. FELDMAN: What I want your Honor to find is that 30% is a prima facie finding that there has been a substantial lessening of competition in that line of commerce because of the acquisition and that in turn is based solely upon the acquisition of Greater Buffalo of International and nothing else, nothing else beside that, that is all, irrespective of con-
3511 spiracy or anything else, that is what followed because of it.

This is just one segment of the anti-trust laws just dealing with our problem, and it attempts to exclude basically all the other considerations. I might say this, your Honor, that as these principles—we are trying to work out a formula of the principles that have come down from the Supreme Court, these are lengthy decisions. You get the principle and you get—it is like corpus secundum, there isn't a proposition of law that you can't pull out of context and get it to support you—this we say makes sense when you take the facts of these cases, and they are cited in our brief, and you look at the ultimate conclusions. Now, in addition we say under the particular facts—

The COURT: Wait a minute. You said look at the ultimate conclusion?

Mr. FELDMAN: Of the court.

The COURT: I thought you meant the ultimate conclusion economically.

Mr. FELDMAN: No. You look at the conclusion and
3512 decide. You are going to get dicta here and dicta there, it could be pulled out of context. In fact, in the Dupont case—

The COURT: You mean there is nothing crystal clear in the Supreme Court in this area either?

Mr. FELDMAN: I would say it is fairly—in law there is nothing crystal clear, that is all I can say. In this area, because you are dealing with economics, judges like most are explaining why they do certain things, you could jump to all sorts of conclusions, that is one of the problems in the whole field.

The COURT: That is the reason I asked you whether or not there was a special consideration of the facts in an instant case.

Mr. FELDMAN: I would say——

The COURT: The only thing I have heard is the shoe case, and I haven't thought that through because I haven't read that, I don't know whether there was a tie-in or not. You have told me what you think the facts are.

Mr. FELDMAN: That is right.

The COURT: But the other cases, on the face of it, I would be suspicious of as being controlling in this case of the
3513 newsprint business, but I will have to——

Mr. FELDMAN: All I can say, there was no suggestion in the course of the opinion of any tie-in, if that word is used anti-trust wise.

The COURT: I am talking about the unique type of the industry, banking, and where you got holdings of stock of the consumer, the Dupont case.

Mr. FELDMAN: In respect to the people in this industry, basically, can anyone say people who make color comic supplements are not showing as much ingenuity in running their business as any bank?

The COURT: There is a difference between having ingenuity and having the ability to get a charter for a bank. That might take ingenuity too, but a different kind.

Mr. FELDMAN: Going on, your Honor, we say—this is the Dupont case, two of them cited in our brief, this is the second—the reason we say divestiture is mandatory, I qualify it in this sense, some of the cases hold that the trier of facts has
3514 broad discretion and then when the case comes up to the Supreme Court they say that is true but in this case the only remedy is divestiture, I am talking about divestiture itself, so it goes back. We say when a trier of facts is told that he has discretion but there is one alternative open to him, there isn't much discretion at all. In some of the other cases cited in our brief the court, after reversing the judgment of the trier of fact below, has on its own ordered divestiture without further hearings. Any further hearings in the District Court would be to implement the basic divestiture order of the Supreme Court.

The Dupont case, as far as the language goes, later on in

the second case, regarding divestiture, says that the very words of Section 7 suggest that an undoing of the acquisition is a natural remedy, and this is the point, in talking about the basic prerequisite to look for, it is the concentration rather than any of the acts in the industry.

The COURT: By divestiture you mean not just the Wilkes

Barre plant, you mean that in your opinion Greater

3515 Buffalo should divest itself of any and all control over
Lufkin, Sylacauga and——

Mr. FELDMAN: That would be divestiture. As far as this case is concerned, I mean the Section 7, just on Section 7 alone, divorced from anything, that would only be applicable to the Wilkes Barre plant and also to the Sylacauga plant. When we come to the Lufkin plant, yes, there were some assets and that type of thing involved in the competition, it is also tied up in the conspiracy, but just on the Section 7 we say there should be divestiture. I am not going into the injunctive relief surrounding such divestiture, that will be developed by Mr. Bernstein. We say that once there is a finding of illegality as to the acquisition of International, then there should be a finding or an order of divestiture as to Sylacauga, but that would first have to be premised upon a finding as to illegality of International. We say the basic premise is that International—and all the facts are spelled out in the brief, I will not elaborate further—

International, prior to 1955, with King had taken cer-
3516 tain definite steps for the building of a plant in the
south, namely, in the Sylacauga area, and it entered into
a—at least International acquired a mill contract for news-
print, and at that time there had been a shortage because of
the Korean War, and no color printer wanted or dared to go
into an area without some type of insurance that newsprint
would be available, and such a contract was for ten years, that
was signed, and Gorman in his letter indicated that to Nicht,
that was the first consideration they would have to overcome
and decide before going into a southern plant. In addition to
that, the president of International, namely, Gorman, visited
the area, and other personnel visited the area, and they estab-
lished relationships with the people in Sylacauga, and some
three weeks or four weeks prior to the sale of International, the

president of International wrote to the people in Sylacauga saying to them that we are definitely going into the
 3517 Sylacauga area and please go ahead and purchase this land you are going to give us. The people in Sylacauga had been raising money to purchase this site and this was his letter to the people down there.

In addition to all that, and this is very important, this Sylacauga plant was going to be in competition with the plant that Greater Buffalo was developing at Lufkin, Texas, and about that time, namely 1954, Greater Buffalo signed a contract in the Lufkin area for the supply of newsprint for a given period of time, and documents in our files show that International was very concerned, so was King, I mean they are in evidence, of this competition that was going to take place between Greater Buffalo and King in the selling end to certain areas in the south and southwest.

Now, we further go on to say that after Greater Buffalo acquired International, the people at International went
 3518 ahead and did the same thing, and this involves the purchase of Press 2055 and the sending of some six people for a year to help build and erect machinery and also the press in the Sylacauga area, and one of the chief employees of International becoming the manager of the plant down there under this subsidiary which was created, called Dixie, and in the transition phase the first president of Dixie was the president of International, and generally in the formative stages International handled all of the contact down there. In addition, they advanced money, the money was something like two hundred forty-three thousand dollars, the purchase of the company was only five hundred seventy-five thousand dollars. What Greater Buffalo did, as far as International was concerned, is what any normal corporation would do as an incident of ownership. We are only saying that that has to be viewed, because it put Greater Buffalo in a greater and stronger competitive situation because of the purchase of Interna-
 3519 tional and the building of this plant through International—

The COURT: We have been going about an hour and twenty minutes. Let's take a short break and we will come right back at it again.

(Thereupon the Court was in recess at 11:30 A.M.)

(Proceedings resumed, pursuant to recess, commencing at 11:50 A.M.)

Mr. RAICHLE: I wonder if we could not answer Section 7, because it seems to be somewhat separate and apart from the rest of it, while it is fresh in your Honor's mind?

Mr. BERNSTEIN: If the Court please, it is woven into the entire argument. I would prefer to go on. We have something more to say about Section 7, and the defendant would have the opportunity to reply in full.

The COURT: Let Mr. Bernstein go ahead. How much time do you figure you will need, Mr. Bernstein?

Mr. BERNSTEIN: I think it will take an hour and a half, at the least.

3520 The COURT: All right, go ahead.

Mr. BERNSTEIN: The Government's position to this point is that the basis for the divestiture of Wilkes Barre and Sylacauga is that it is mandatory upon the Court if the Court finds that Greater Buffalo was prohibited from acquiring the stock of International, and the Government's further position was that the Court must find that Greater Buffalo was prohibited from acquiring that stock because the effect of that transaction may be to substantially lessen competition in the printing of color comic supplements and in the sale of color comic supplements and in the printing and sale of color comic supplements.

Now, the basis for the Government's request for the divestiture of the Lufkin plant is entirely different. The basis for that request is that the opening of Lufkin by Greater Buffalo Press was made possible only because of its acquisition of International stock and along with that King's business. Really what Grater Buffalo acquired when it acquired International, aside from the machinery and the plant, that wasn't the
3521 main thing, what it acquired was eight million dollars worth of business, it acquired the syndicate customer, its leading competitor, that was the main thing it acquired, and by acquiring that business it was then in a position to transfer runs from Wilkes Barre down to Lufkin, it was then in a position to be assured of opening Lufkin.

The evidence in this case shows that Greater Buffalo had been considering the Lufkin plant before—when I say “the

evidence" I am talking about Mr. Koessler's testimony, and Mr. Koessler's letters, and some NEA documents there which report information received from newspapers with which Greater Buffalo was dealing and with which King was dealing—there is no dispute about the fact that Greater Buffalo had been considering a Lufkin plant for a long time, to pass on cost savings to the newspapers in the southern area. But one of its principal concerns was that it didn't have enough volume to keep that Lufkin plant going, it had to transfer runs
 3522 from Wilkes Barre to do that, and that would cut down production at Wilkes Barre, but by acquiring King's business—

The COURT: How firmly did they acquire King's business?

Mr. BERNSTEIN: That is definite, solid, uncontrovertible.

Mr. RAICHLE: Wait a minute—

The COURT: Let us assume they acquired it that instant when these things happened, what tie did they have on King for the future?

Mr. BERNSTEIN: All right. Number one tie, they had a ten-year contract with King and—

The COURT: Wasn't there an escape hatch?

Mr. BERNSTEIN: I refresh your Honor's recollection of the evidence—

The COURT: Wasn't there an escape hatch cancelable in that as I remember it?

Mr. BERNSTEIN: Yes, and so we come to the second part, they acquired the only source of supply that King had. King could go to no other printer but Greater Buffalo or International. International had contracted itself, it was its captive plant. International was the only printer for King except for that 25%

3523 out on the west coast, and the only other printer was Greater Buffalo. Where could King go? In legal terms, yes, they had an escape hatch in the contract, but as a practical matter they were sewed up.

I refresh your Honor's recollection while we are on the point. Mr. Koessler testified, and the documents that he had on cross-examination, and he was cross-examined about certain letters that he had written to Mr. Nicht, that contract that had been executed, which was subsequently canceled, in Mr. Koessler's terms a contract which was signed and executed, subject to the approval of the board of directors, but later approval never

come in, the contract was null and void, the Government says it was canceled, which is a better way to describe it, but that is unimportant. The important point is that Mr. Koessler testified that he was anxious to get Hearst's business, he believed, and King had represented to Greater Buffalo that King was going to get Hearst's business, that is why Koessler wrote to Nicht, and he said these are the terms that—these are the

points we discussed on which we agreed could go into
3524 a contract. Those things were, one, that Greater Buffalo

would be the printer, with the exception of four newspapers, and King would be the seller of all Greater Buffalo's business, with the exception of four newspapers that Greater Buffalo felt it had to get the contract with the newspapers and King shouldn't get it for one reason or another, and there Greater Buffalo was going to give King a kickback of fifty cents a thousand, and so what Greater Buffalo achieved was a working arrangement with King that it would have all the business to put into the Lufkin plant, and that is the basis for our divestiture. That brings me into the point that this acquisition of International, the ability to sew up King's business, resulted solely from the fact there was an illegal combination—I will say illegal combination, it sounds less sinister than conspiracy,

conspiracy is a real dirty word, in effect it is the same
3525 thing, we are talking about a common objective—Section

1 of the Sherman Act says any combination or conspiracy in restraint of trade, this is a combination between King and Greater Buffalo in restraint of trade. What was the combination? Mr. Koessler's letters and Mr. Koessler's testimony, and this is confirmed by Nicht's uncontradicted testimony in the form of a deposition. As I explained before, the exclusive arrangement in that King would get the kickback, and as Mr. Feldman said before, because each one of them was then—then had about thirty-seven and a half percent, they had equal shares, of the printing done by all printers for those newspapers who did not print themselves—when I say "printers" I mean color comic supplement printers—they knew that when they agreed, they understood, it was an understanding in that sense of the word, that Greater Buffalo would be the exclusive printer for King, King would be the exclusive seller, that meant that Greater Buffalo was going to have

3526 75% of the market for the printing, which is a monopoly position, is more than five times more volume than any other printer, that gives the power to exclude, the power to control the price, that is the legal definition of a monopoly position. They also knew that when Greater Buffalo agreed, promised King, Mr. Koessler explained that Nicht was a very difficult individual, to get him off your back you had to promise him certain things, that he was very persistent, he had the power over features, and if Koessler didn't humor him and write the letter to him and say this is the kind of material that will go into a contract, Nicht was going to retaliate in some way. Nonetheless, Mr. Koessler said, 'We understand that you, King, will be the exclusive seller,' and that means that King will then control 75% of the sales of color comic supplement printing of those newspapers who didn't do their own, and that is the reason why the Government says that it would be clearly erroneous for this Court not to find that King
 3527 and Greater Buffalo had engaged in concerted action, or combination, in restraint of trade, whereby Greater Buffalo was to monopolize the printing of the sales of color comic supplements for those papers who didn't do their own, and King was to monopolize the sale of them.

Now, this conspiracy was established in stages, it didn't just happen over night. The first stage, according to Nicht's uncontroverted testimony, was that they agreed they would leave each other pretty much alone, that is, Greater Buffalo won't go after King's customers, and King won't go after Greater Buffalo's customers. The second stage was—this was before the acquisition, this was while King was obligated to International for International to be its sole and exclusive printer, except for 25% of its business, which it had for the west coast—King agreed with Greater Buffalo, Nicht and Koessler agreed, that King would transfer runs down to Lufkin—this is before the acquisition, this is before the acquisition when the Lufkin plant was opened—and King in exchange for that
 3528 would get fifty cents a thousand kickback from Greater Buffalo on all of the business, Greater Buffalo's business, that was put into the Lufkin plant that King didn't have. That was the second stage of the conspiracy, and with that arrangement going on, we come to the third stage of the conspiracy, where, according to Mr. Koessler, Mr. Nicht telephoned to Mr. Gor-

man of the International Printing plant, and told Mr. Gorman that Mr. Koessler was going to come over to see him. So Mr. Koessler met with Mr. Gorman at the Hotel Biltmore, I believe it was, and there were a series of discussions there. If you recall, Mr. Koessler said he was interested in—I think it is Mr. Gorman's testimony that said that Mr. Koessler said he was interested in the southern operation of International. What does that mean? That means that Koessler knew that International was proceeding with the development of a Sylacauga plant, he knew that he was proceeding with the development
 3529 of a Lufkin plant, and he said he was interested in that operation, interested in acquiring that operation. That would be a clear-cut violation of Section 7 of the Clayton Act because you are eliminating a direct competitor in that southern area, and Mr. Gorman said he didn't think the owners of International would be interested in selling the southern operation but they would be interested in selling the whole business, and then they continued their negotiations.

Now, we find from Mr. Koessler's testimony and these documents, the letters that he wrote to Nicht, P-15 and P-16, which were in June, June 2, 1955, and June 13, 1955—the acquisition was on June 25th, so this preceded the acquisition—and one of things that Mr. Koessler said to Mr. Nicht was. We are agreed that Greater Buffalo Press will purchase International,' so it was part of that transaction that Greater Buffalo was going to buy King's only supplier, and part of these letters show that Greater Buffalo agreed with Nicht as to—
 3530 Greater Buffalo agreed with Mr. Koessler as to what the printing price would be that International would charge Greater Buffalo, and after this agreement was reached in principle and set forth in these letters, then Mr. Nicht continued on discussions with Mr. Gorman for a contract which ultimately resulted in a contract that was signed after the acquisition, but the prices were established before the actual date of the acquisition in that contract, the formal document was signed after the acquisition.

So, therefore, the Government says it was all one ball of wax, one transaction that culminated in this acquisition and the elimination of the printing competition between Greater Buffalo and International and, more important for this part of the case, it was the—those series of acts resulted in Greater Buf-

falo's unobstructed opportunity now to open up the Lufkin plant, to transfer the runs that King had in Wilkes Barre, the new business that King was going to acquire, the new
 3531 Hearst newspapers that Koessler testified that if he got all of Hearst's business, as King had promised him, he didn't have sufficient capacity in Dunkirk to handle all of it, so he needed Lufkin, he needed Wilkes Barre, if that was going to come to pass. I understand from the testimony that it didn't come through, these two businessmen were dealing with one another and many of the things each promised did not come to pass, but that isn't the test of whether or not there existed a combination in restraint of trade. It is the meeting of the minds that certain acts occur that constitutes the concerted action, and now we come to the next point that your Honor is mostly concerned about, and the Government is too, it is a proper concern, that is, what are the equities in a situation?

Let's assume that everything that I have said is true. Let's also take into account that here is a business that a man started with a one thousand dollar investment and built up, and here is
 3532 a business that concededly was improved by Greater Buffalo in Wilkes Barre and in Sylacauga. Unless we provide adequate compensation to Greater Buffalo for those divestitures, if you are going to force a divestiture, it would be a confiscation of property without proper compensation. Therefore, the relief that the Government seeks here in seeking this divestiture, in order to do equity, is put in these terms: one, it must be at a fair price to Greater Buffalo Press, it must be compensated for the properties it is forced to sell. The way the Court assures itself that that happens is it selects its own trustee to supervise the sale, to see that the price is adequate, to see that nobody gets a windfall, that nobody takes unfair advantage of the seller, and also to see that the sale is made. In order to make sure the sale is made, as the Court asked before, why can't anybody else come along, why can't anybody buy an old press, what
 3533 is so unique about it? The point is what the anti-trust lawyers call the barriers to entry, in modern, ordinary everyday terms that means that no businessman who is interested in entering the business of printing color comic supplements for those newspapers who can't print their own is going to make that investment if he looks around at the competition and he sees that Greater Buffalo has 75% of the

market, he is going to be disinterested in that. On the other hand, if he says, "Wait a minute, Greater Buffalo doesn't have 75% of the market because he has got to sell the Sylacauga plant, he has got to sell Lufkin, he has got to sell Wilkes Barre, he won't have that share of the market, he will have to compete like everybody else for that share of the market." "What business will we have available to us," a prospective buyer will say, "Look, the Court ordered that one year from the date of this judgment Greater Buffalo will no longer be able to print for King, the leading seller of newspapers." Then a prospective printer says, "I have a ready-made customer, if King wants to stay in the 'business of selling printing he has got to get 3534 a printer, I have a customer there.'" Now, if it should turn out that my prediction is wrong, if it should turn out that nobody is interested in entering the color comic printing business, Greater Buffalo Press is entitled to everything that it has today and the Court order can say no divestiture is required unless the trustee accomplishes the sale within 365 days of this judgment to somebody who is going to use it as a printer of color comic supplements in competition with Greater Buffalo.

Now then, we have to watch another thing, we have to see that Greater Buffalo doesn't improperly benefit from this illegal arrangement that it made. So if it should turn out that Greater Buffalo is the only printer, that is, nobody else is interested in buying it, King, despite the fact that it no longer can get its printing done by Greater Buffalo says, "I am going out of the printing business, I'll just sell features," then in that event—or King may say—in order to prevent King 3535 from saying, "I'm not going to buy it, I'm not going to make arrangements with any other color comic printer to buy it because if it isn't sold in one year and Greater Buffalo can keep it I can go to Greater Buffalo and get my printing done there." If it knows that it can't because the Court prohibited it from doing that it has to make the same election it had to make back in 1954 and chickened out of it, it either had to put more money into International and create a printer or get out of the printing business and sell its features, and it shouldn't be a printer unless it is printing.

Now, in that event, if the Court prohibits Greater Buffalo from printing for King and also printing for any other syndicate that may come along and have King's ideas, for that reason

on we have this incongruous and incompetitive situation, when Greater Buffalo sells directly to newspapers and it also prints for syndicates who hold themselves out to newspapers as being printers, it is creating a false impression to the consumer
 3536 that the Court is concerned about and the Government is concerned about too. The newspaper has the impression that it is getting a competitive price from Greater Buffalo, as one competing seller against NEA, for example, as another competing seller, but in fact, Mr. Anderson of NEA testified, you have to have confidence in your printer, the kind of relationship that a syndicate has with a printer, it's got to know the printer isn't going to go out and undercut and take away the business of the syndicate because he is in a confidential relationship, he knows when the contract is expiring, he knows where the customer is, he knows all of the intricate details about the transportation and everything else, and if the syndicate develops that business and then the printer takes it away, the syndicate is going to consider that as unfair competition. There is understanding, a natural understanding between the printer for the syndicate and the syndicate, "You leave
 3537 my customers alone, I will leave your customers alone," and that is brought out in the documents and testimony of Mr. Anderson.

Now, that means that Greater Buffalo must make an election if it should find that it is relieved from any divestiture obligation because nobody has come along, it must either decide it is not going to deal with NEA or any other syndicate, but it is going to use its ingenuity and sell directly to newspapers as a printer, and that means NEA, King and any other syndicate, if they want to be in competition with Greater Buffalo, it has to develop printing facilities on its own or buy a printing facility plant, it has to do something, otherwise they are ceding a natural monopoly to Greater Buffalo. Greater Buffalo is acquiring this by default, not by reason of conspiratorial action with some of the other conspirators. So it can make an election it will sell alone, or make an election
 its only customers will be syndicates, it will sell to syn-
 3538 dicates. If it is going to sell to syndicates, you have the same situation we have now. King is one syndicate. NEA is another, Greater Buffalo has the printing, it is going to reap the benefits and the profits, regardless of which

one gets the order it is going to be the printer. Of course, if it harmonizes the two, eliminates price competition between the two, it can get a better printing price because neither one of them are at each other's throats, neither one of the syndicates. Therefore, in order to prevent that kind of an improper anti-competitive situation, if it elected to deal through syndicates, then the syndicate must act as a sales agent for Greater Buffalo. In other words, Greater Buffalo is the printer and these syndicates are acting as its salesmen for a commission, not a sub-contract, not a syndicate going out and saying, "I will sell you printing at this amount", and in turn make another deal with Greater Buffalo. It will sell the printing for Greater

3539 Buffalo, the syndicate will be the salesman for Greater Buffalo, and so that all can come in in a non-discriminatory manner or Greater Buffalo can elect to select one syndicate only, one syndicate only, it will be its exclusive printer and the syndicate will act as the seller.

Now, that only becomes fair because everybody has one year's notice that this is what is going to happen, and "if you want competition now is your time to come along and do it," and if they are not interested in the business that means the nature of the industry is such that it really can't—it just lends itself to a natural monopoly. That determination will be made by supply, demand, business decisions of lots of other people, and not by conspiratorial action between two of the major competitors.

Now, in order to do what I have just outlined——

The COURT: Let me ask you something that just ran through my mind. This divestiture business, let's assume that these plants were ordered divested, what do you do about good will and things in fixing a price?

3540 Mr. BERNSTEIN: That is what you are selling. Each plant——

The COURT: You claim the good will is illegal.

Mr. BERNSTEIN: Absolutely not.

The COURT: This contract you say is an improper contract between——

Mr. BERNSTEIN: King and Greater Buffalo.

The COURT: King and Greater Buffalo.

Mr. BERNSTEIN: The reason that contract is illegal——

The Court: That is all there is, if they don't have a contract they have no good will.

Mr. DENSMORE: You are talking about King's business?

The Court: Yes.

Mr. DENSMORE: That is why I say if the Court, in its judgment, prohibits Greater Buffalo from buying—from printing for King for one year's time, that means that everybody who is interested in the plant knows that it has King as a potential customer, unless King wants to go out of the printing business. It seems highly unlikely, King made eight million dollars worth of sales of printing it had 37% of the market, it seems highly unlikely that it is going to give it up by default.

3541 So they do get the good will. The customer does get the good will, somebody is buying a plant with available customers. They are also buying the availability of NEA. NEA can make that election or some other syndicate can make that election. What we are interested in is the opportunity for competition. Nobody has a crystal ball that can predict with certainty all things. It is a reasonable probability. This is creating the climate, the opportunity for competition, if it is going to be. This is going, as I said, to impose a restriction on NEA because if Greater Buffalo is prohibited from printing for NEA, except on certain terms, NEA says, "I have got a contract with Greater Buffalo, you can't cancel that contract." The only way that contract would be cancelable is if it is illegal, if the Court prohibited it, and the only way the Court can prohibit NEA from continuing on in a contract is if that contract was entered into illegally, if it was the result or fruits of an illegal combination in restraint of trade, an illegal conspiracy, that is the only reason why it is important in this case, it is the only reason

3542 in this case the issue arises as to did NEA join the conspiracy or did it not. NEA, the Government says, joined the conspiracy, because when it sold that junk press what it really was selling was its accounts, it sold those accounts to Greater Buffalo.

Let's follow this through for a minute. Here is NEA with a junk press, it can't do its own printing any more because of the antiquated equipment, so it has two alternatives, it is either got to liquidate, junk it, get out of the business, which means that all of the newspaper customers that it then had are up for grabs for all other competitors, there is competition for

that business, or it can remain in the printing business by getting another color printer, such as International or World Color or Acme or somebody else. NEA doesn't take that route,

NEA goes to Greater Buffalo. Now, this is a sound business decision, why not, you always go to number one, and their relationship had been such that it was natural to go to Greater Buffalo. But the important thing is what NEA was really selling was its customers, it sold those customers under the term that it then had the opportunity to keep those customers——

The Court: You are talking about the junk press in Buffalo?

Mr. BERNSTEIN: The junk press in Buffalo.

The Court: Where would you go to sell it if you had a possible buyer, to some remote printer?

Mr. BERNSTEIN: What happened to the junk press, was it junked or used? It was partially junked——

The Court: I am talking about you got a printing plant called Buffalo Color Press in Buffalo, you got a—you call it a junk press, you want to get out of the printing business in Buffalo——

Mr. BERNSTEIN: Oh, if you want to get out of the printing business——

The Court: In Buffalo.

Mr. BERNSTEIN: Do you mean not print or lose the newspaper accounts?

3544 The Court: I said you want to quit printing in Buffalo.

Mr. BERNSTEIN: Quit printing in Buffalo.

The Court: Where would you go to liquidate?

Mr. BERNSTEIN: These are the only decisions that you have to make. You either have to sell the junk press at salvage value and give up your customers because you have determined that you are not going to print any more, or you have got to buy a new plant or get yourself another printer if you are going to keep the customers, or make a deal with some other printer by selling them those accounts, and that is what NEA did, it sold those accounts to Greater Buffalo. Now, what were the circumstances under which it sold those accounts? It then knew——

The Court: Let me ask you, where were the accounts that they sold? Weren't they in the environs?

Mr. BERNSTEIN: Oh, no, they were all over the country, they were all over the country; Waterloo, Iowa; Sioux Falls; down south, all over the country.

The COURT: All right.

3545 Mr. BERNSTEIN: Now, what was the climate of the environment in which NEA made this transaction? It knew from its own experience that if a printer is dealing with a syndicate there has to be—there is an implied understanding, you leave my customers alone, I will leave yours alone, and it knew that Greater Buffalo had acquired the supplier of its leading competitor, King, and was then printing for King. So then it had to infer, it is a natural inference, any businessman knows that, that King and Greater Buffalo are not then in competition with each other for their business. Otherwise, King, which theretofore had been Greater Buffalo fiercest competitor up to the conspiracy, King would never permit a situation whereby its only source of supply would be acquired by its leading competitor, it would do everything to stop that. There is a document in evidence which shows that in 1954 an NEA official said he received word from one of his Texas people who said, "I spoke to so-and-so of the Dallas Herald," that was a newspaper that was then printed by King, it was King's ac-
 3546 count, and he said, "King and Greater Buffalo have made an arrangement whereby King is going to transfer some runs to Lufkin." This is in 1954. Clear hearsay, clear business rumor, not competent to prove that actually happened. It turns out from other facts and other documents in testimony from Mr. Kocassler and these documents that that was the fact, those things had been done. Nicht's uncontroverted testimony said that arrangement was made. The rumor was a good one, and since it came from a newspaper that King was selling to, King had an advantage to say to them, "We are pretty soon going to print down here, you are going to save the transportation." It was pretty reliable. In any event, NEA was alerted to the fact that Greater Buffalo and King were not the real competitors they should be. Maybe that is a suspicion, a surmise, you can't call them conspirators because of that, but the next
 3547 thing they learn is that Greater Buffalo acquired International's stock. That is another fact that would alert them to the point that there must be some kind of an arrangement, but even that isn't enough.

Now, what happens, according to Mr. Anderson's testimony, from the time that Greater Buffalo acquired International and October when it made this deal selling its junked press and its accounts—what it really was selling was the accounts—until that time it was in constant negotiations with Mr. Koessler, and it was constantly complaining to him about the unfair advantage that King had over them, and the substance of the complaint was this; they said that King has this very special arrangement in the International printing place whereby no matter how many times they change the pages of the make ready on the color comic supplements they don't have to pay a cent more, and NEA was in a different position, in Greater Buffalo's plant any time they had a change of a feature or they had a change on one of these pages, any one of these pages, any time there was a change on it, NEA paid more money.

3548 So they said to Greater Buffalo this is unfair, especially because King is keeping NEA's features out of these newspapers in this way. That is all Anderson's complaints to Koessler. He said, "When I sold to newspapers getting a ready print from King, printed by International, the newspapers say to me, I can't substitute an NEA feature for a King feature because if I do King tells me that the make ready charge is going to be high." NEA knows of its own knowledge that King is not paying any more for that, so it is unfair competition in NEA's view. So it knows, it feels it is getting a fair price, Koessler told them, "I inherited this contract from International, I can't change it, I am giving you the lowest price in the Greater Buffalo plant, your price is no different than I sell to anybody else." So therefore Mr. Koessler says, "Why don't you talk to Mr. Nicht?" And Mr. Koessler makes the arrangements, ar-

3549 ranges a meeting at the Beverly Hotel in NEA's suite at the Beverly Hotel, but before that meeting, according to Mr. Anderson's testimony, before that meeting he had a conversation or series of conversations with Mr. Koessler, and the substance of the conversations was, in Mr. Anderson's mind, that he felt fairly confident that an agreement could be reached between King and NEA, that they would have a truce, they would leave each other's customers alone. So they went to that meeting at the Hotel Beverly and there they reached a truce with King, and Mr. Nicht said when he left that meeting he felt they were going to leave each other's cus-

tomers alone. Anderson said when he left that meeting NEA determined if King was going to live up to its truce, it was going to live up to its truce. It issued instructions to the sales manager and the salesmen ultimately knew about it, and until 1957 that truce was on. After 1957 NEA was disgusted with the way King was honoring it, so NEA didn't honor it any more,

and in 1958 it sent a notice to all the salesmen that the
3550 truce was no longer in effect. The important thing is this; where is the conspiracy, what is the conspiracy?

The conspiracy, I remind the Court, is for Greater Buffalo to monopolize the printing and King to monopolize the sales, and now when NEA makes a deal with King that it will leave its customers alone and King will leave NEA's customers alone, it is in effect agreeing that King and NEA will share in the selling. So the 75% of the printing—when NEA sold its accounts to Greater Buffalo, knowing that Greater Buffalo had acquired International and then controlled 75% of the printing for all of the newspapers that didn't print their own, and added to it its accounts, it increased the monopoly position of Greater Buffalo, and therefore NEA knew that it was increasing Greater Buffalo's position, and it knew that it had an agreement with Greater Buffalo not to take each other's business away from one another, and when it entered into an agreement with King

not to take King's business away in return for a recip-
3551 rocal promise by King, in effect what it was doing was entering into a combination or conspiracy that was in restraint of trade, that Greater Buffalo would monopolize the printing of color comic supplements and King and NEA would monopolize the sale, and it is because of that base this Court has the right to declare that as a result of that illegal conspiracy, to dissipate the fruits of it, NEA must be subjected to these restrictions, that in one year's time if Greater Buffalo is relieved of the divestiture of its plant, then Greater Buffalo can't print for—has the right to elect not to print for NEA as a syndicate, even though NEA has a contract with Greater Buffalo.

So now we come to the next point of our argument, that the defenses that have been raised in this case have no merit. What are the defenses? The first defense to the Section 7 violation was that International was a failing company. As your Honor knows, Section 7 of the Clayton Act which prohibits

3552 any corporation from acquiring the stock of another corporation where the effect may be substantially to lessen competition in any line of commerce, the cases hold that this prohibition is not applied against an acquisition where the company acquired was insolvent and there was no other purchaser, and that is known as the failing company defense. This defense is what Greater Buffalo raises. The facts don't bear it out. International was not insolvent, it paid dividends, the documents, the minutes of the directors meetings in evidence shows that up until the time of the acquisition it was paying dividends to its non-active owners of the stock.

The COURT: You mean that family down there that was always making demands?

Mr. BERNSTEIN: The Govine family up until the date of the acquisition constantly received dividends, over and above all of the salary expenses for the management, the president, after all the other expenses were paid, and the evidence shows, 3553 the documents in evidence, the minutes of the meetings of International shows that those dividends were paid after a certain reserve was set aside for the acquisition of Sylacauga. The amount of money——

The COURT: Who was that family?

Mr. BERNSTEIN: Govine.

The COURT: That is where the woman married some duke, I remember that was commented upon. All right.

Mr. BERNSTEIN: And furthermore, up until the date of the acquisition International earned a profit, every year it had a profit. Now, the failing company doctrine isn't applicable to a situation where a corporation is not earning the kind of revenue that it would like to earn, or doing as well as it would like to do, or its sales are diminishing; that doctrine only applies when a company is insolvent, and even when it is insolvent, there are not other purchasers, so that defense is out.

The next defense is market. Mr. Feldman went all through that, and the point that Mr. Feldman was trying to make about all of this uniqueness, all of this skill, there was a simple 3554 point he was trying to make, and that was that Section 7 says an acquisition is prohibited where in any line of commerce the effect may be substantially to lessen competition, so logically the courts have said the first thing we have to do

is find out what is the line of commerce. What Mr. Feldman was saying was that this Court has to say there are any number of lines of commerce and in every one of them there may be a substantial lessening of competition. The first line of commerce is printing of color comic supplements. That means you take into account all of the newspapers who could print their own and all of the color comic printers who print for newspapers, and we find that Greater Buffalo by this acquisition acquired 40% of the market, and the significance of the percentages, your Honor, is that where a company has 40% of the market, by acquisition, that indicates that there has been, not maybe,

there has been a substantial lessening of competition
 3555 because prior thereto there was competition for 20%
 and 20%, and that was eliminated, now that amount of competition has been eliminated, and so there has been a substantial lessening.

The Court: Doesn't that happen every day with companies that are not doing well, they are not competitive, and somebody swallows them up?

Mr. BERNSTEIN: Let us not paint with such a broad brush—

The Court: I asked you a question.

Mr. BERNSTEIN: Swallowing them up, if they are swallowed up by an acquisition of stock or swallowed up by the acquisition of assets or merger, any one of those two, if they are swallowed up in that manner, then every one of those transactions has to be examined into to see whether the effect of that acquisition may be to substantially lessen competition in some line of business, in some market, in some part of the country, and if it is then it is prohibited. Many, many times, all of these
 mergers that go through, that you see are not stopped.
 3556 there are no litigations, or either somebody has determined that the substantial lessening of competition in the line of commerce is not significant, it is insignificant, but where you get an acquisition of 40% of the market, then it is significant, and certainly if you look at the sub-market here, that is, printing for those newspapers that don't do their own, then you find 75%, and in that sub-market it is even greater, the effect surely is to have lessened competition in that market, and because now the only significant printer is Greater Buffalo.

Now, your Honor is concerned about the fact didn't it acquire that position because of its skill and ingenuity, and the answer is no, not entirely, because it acquired it by——

The Court: Supposing it had by its skill and ingenuity?

Mr. BERNSTEIN: By its skill and ingenuity? There would be nothing wrong, there would be nothing wrong. That is the solution that the Government is proposing. If the Court
3557 orders the divestiture that the Government proposes and nobody else comes along, then Greater Buffalo will have acquired its position by its own skill and ingenuity alone, without an acquisition and without a conspiracy.

Now, the next point that is made, this is a minor point but I think we should comment on it at this time, the arguments are made and the Court has under consideration the Nicht documents as to whether they are admissible. The Government's position is that even——

The Court: Let me ask you something. I hate to interrupt you. Now, at the time that International was operating down there, do you contend that they were competitive in skill, in any sense of the word——

Mr. BERNSTEIN: Yes.

The Court: ——With Koessler's operation?

Mr. BERNSTEIN: Yes, sir. They were not as good, they were not as good, but they were sufficiently competent to enable King to have an equal amount of business that Greater Buffalo had.

The Court: I got the definite image that the plant
3558 was archaic, that the printing machinery was archaic, that that family you mentioned was on the back constantly of the producers for more money to meet their requirements, and that indeed, at least from the manager who testified here, it was a dim picture as far as production is concerned. You don't agree with that?

Mr. BERNSTEIN. I don't agree with that. I would characterize it in this fashion, your Honor, and first I must concede the true parts of the contention of International's manager. Yes, the Govine family was always on its back. Yes, they were not getting the kind of price out of King that they wanted to get or should have gotten. Yes, they needed to do something, but I disagree that their plant was antiquated and on the way out, because King was relying on that completely, and they were

operating successfully, and NEA was concerned about competition from International and King.

Now, it is true that NEA was more concerned when they heard that Greater Buffalo acquired International because
 3559 cause, in the words of Mr. Anderson, this is his testimony, he said, "Now I was concerned that whereas King not only has a better price from International because he is milking that family, he is now acquiring Greater Buffalo's ingenuity and skill and economies in the make readys and everything else," and he is concerned about the competition from King. That is why he went to Koessler and expressed that concern to him. That is what resulted in the truce, that is the way they were going to neutralize it. International wasn't the failing company that the impression would create just from the fact Govine was on their back and they were not getting as much out of King as they should have.

The COURT: What about their gear?

Mr. BERNSTEIN: Their equipment was satisfactory. The testimony in the case was that it was improved, economies were made in the equipment, and economies in the operation were made, and it was improved. That is not to say because
 3560 equipment can be improved that it is in the same category as the junk Buffalo Color Press. They were moving every day, and the union depended on them and they were employing a lot of people, and that was not a junk plant that was dying on the vine, it was going, it was going. So what I started to say, your Honor, was as far as the Nicht documents that are under advisement by the Court, the Government does not require those documents to support the finding that Greater Buffalo and King engaged in this conspiracy, because the testimony of Mr. Koessler, and his own documents, and Nicht's uncontroverted deposition, established that. The documents flesh it out, the documents put meat on it, it answers a lot of unanswered questions one may have, it is good background to show the milieu in which this is being done. The Court can weigh which parts of the documents to accept and which parts are incredible. If the Court recalls, when Koessler was cross-
 examined he took many, many of those memoranda
 3561 it was taken down sentence by sentence, and he confirmed those things actually occurred. So the documents are reliable, and the Court can determine how much weight to give them.

The COURT: Let me ask you this, Mr. Bernstein, let's assume that Koessler wanted to be truly greedy. He had that International plant, did he not, he had the Buffalo plant, he had the skill to print well and he apparently had the skill to sell well. Why did he have to do anything with King? He could say, 'If you want me, start dealing with me, start competing with me.' Why did he have to say, 'You sell and I print and I print and you sell, so we have a Mexican standoff here.'

Mr. BERNSTEIN: If I understand your Honor's question—

The COURT: He had the world by the tail, according to you. He had a plant that was good, not the best, but good.

Mr. BERNSTEIN: Excuse me. At what time, prior to the acquisition?

The COURT: Yes.

Mr. BERNSTEIN: The answer is this; he had the world
3562 by the tail but there was a leveler, and Koessler went to great lengths to tell us what the leveler was, why he was so afraid of Nicht, why he didn't have the world by the tail, because Nicht had the power over the features, Nicht was tying in the features.

The COURT: He had to have them printed somewhere, you say he could not get them printed anywhere.

Mr. BERNSTEIN: Nicht had them printed at International. How would Greater Buffalo—

The COURT: You said before acquisition. I mean when Koessler got International and Buffalo Press, then why couldn't he just say go and whistle to King Features?

Mr. BERNSTEIN: Well—

The COURT: That is, if he wanted to be truly hungry.

Mr. BERNSTEIN: Koessler said he was still afraid after he had International and Greater Buffalo, he was still afraid of Nicht's power over the features, because he was afraid that if he told King to go whistle—

The COURT: It is part of your argument that King and Nicht
3563 had to come on their knees and deal with Koessler because they were beat, he had everything wrapped up in skill and facilities.

Mr. BERNSTEIN: No, the gist of my argument is that Nicht, King, NEA, any other syndicate, any other printer, could nonetheless compete with Greater Buffalo on a fair basis, even if they didn't have any tie-ins or anything else, it was fair competition, because they were—even though Greater Buffalo had

the greatest skill—because they had the greater marketing organization. They were—their salesmen, they had many more salesmen than Greater Buffalo, they were out selling newspaper features anyway. If your Honor recalls the industry, the license to the feature was gotten by the newspaper, it wasn't gotten by the printer. Even if Greater Buffalo went into every one of these newspapers and said, "I will do the printing for you instead of your own," the newspaper had to get the license from the syndicate. If King didn't give them a license, 3564 Greater Buffalo with all its skill couldn't print page number one. So there was a countervailing power, they just couldn't do it. Those were the realities of the industry.

The Court: What about this kind of a reality? Somebody finally comes to the conclusion, including International, that Koessler is the best and you can't beat him, he knows how to do it and do it well and reasonably, and Koessler up to then had been not only printing, he had been selling, and somebody says look, we can't beat you printing—according to your argument—but since we have the franchise here you can't beat us selling either, so why don't you print and why don't we sell? Would that be contrary to law if they did it in that fashion?

Mr. BERNSTEIN: I would say most likely—the reason why I say most likely with not 100% confidence—in order to establish either a Section 1 Sherman Act violation, that is, the combination in restraint of trade or contract in restraint of trade. I have to find out all of the facts, it is difficult to take a hypothetical situation, but I am saying in general, to articulate the principles, that is what I gather your Honor is interested in—

The Court: You have got a lot of evidence in this case subject to a certain interpretation which you, as an advocate, are interpreting positively in the way you feel it indeed should be interpreted. I don't think any of it is so ironclad that it couldn't be interpreted in another way.

Mr. BERNSTEIN: To answer that point, your Honor, the reason why I make that dogmatic, categorical, sure statement is that there is no evidence here that King decided it was going to get out of the printing business. As a matter of fact, all of the evidence shows that it was moving along toward opening up a Sylacauga plant. The testimony in the case shows that King

had more than 80% of all the business done in the southeast, and it wanted to service those customers by getting cheaper transportation, and it was going along on Sylacauga. There is no evidence in this case that Mr. Gorman or the employees or anybody else in International, except the owners, were interested in getting out, and the owners were only interested in getting their money. They made no investment, they made loans to the corporation, the loans had been repaid, none of their money was tied up in it whatsoever, all they were doing was salvaging something. So under the circumstances of this case the only way it could be accomplished is either by an agreement with King, which would be illegal, or by an acquisition, which would be illegal. If it happened the other way—let's change the facts, your Honor, let's assume for the moment that International had gone to King and said we have had it, we don't intend—we find that you have paid us so little money that we are not interested in printing any more, and we are going to liquidate, we are going out of business, and we are going to put up our plant for sale, and we are selling our machinery, we are selling the real estate, the bricks, we are going to discharge our employees, or they could say we are putting up our stock in this company for sale on the open market, we are going to get brokers and announce our stock is for sale, that is what is going to happen. In such event, if Greater Buffalo came along and said, I am going to buy your stock, the Anti-Trust Division would come along and seek to enjoin this on the ground it violates Section 7 of the Clayton Act, and if the Anti-Trust Division for one reason or other, it is made up of people, if the people are too busy or inept or they don't move, any other color printer could have brought a civil action for an injunction or damages to prohibit that kind of acquisition, because Section 7 of the Clayton Act prohibits it. So it couldn't be done that way. On the other hand, if International said we are going to stop business, and they stopped doing business, and then King said well, I will go to Greater Buffalo, I have no printer, I will go to Greater Buffalo and say to Greater Buffalo will you print for me, as would anyone else, if he didn't say I will give you my business only on the condition that you don't deal with anyone else, then it would be lawful. The way King did it was to say I will give you all of my business and all of the Hearst

newspapers if you agree I will be the exclusive seller, you won't deal with NEA or anybody else, that is the illegal part of it.

Now, the next argument that is made by the defendants is that it is erroneous to find—the next argument that is made, there is another interpretation, as your Honor just suggested, these letters, P-15, P-16 and the contract P-27, never really were effective, it doesn't constitute a contract. This argument assumes that the only basis for violation of Section 1 is the existence of a valid and enforceable contract. That is not what Section 1 says. It says any combination or conspiracy in restraint of trade, and that means any understanding, any meeting of the minds. Mr. Koessler said here, and he wrote it down, "This is what we agreed could go into a contract," and the written contract itself says it is effective May—it is signed and executed contract, it says, Paragraph 14, "This contract shall be effective May 5, 1958." It runs from December 1, 1957 to November 30, 1967, and the evidence was that the board of directors of each company rejected the contract after it had been formally signed in October of 1958. The Government's point is that regardless of the formal contract, this understanding did exist, and it was testified to by Mr. Koessler, he explains it. He said, "I did it because I feared Nicht's power over features." Nonetheless, he conceded that he did it. The documents themselves, the documents themselves, when the Court examines the precise language it will see there is a lot of formal language in it. Mr. Koessler acknowledged authorship of it, of many of the paragraphs, although he said that many of the paragraphs were insisted upon by Nicht, and he put them in there for that reason. There is one paragraph that he said he himself—no, excuse me, I am wrong—this was a paragraph that he drafted because Nicht asked it go in. I am reading Paragraph 10 from P-16, and I am reading it to demonstrate to your Honor that this is not casual, informal, scrap language. This is precise, formal language that would perform the provisions for a contract. "The provisions contained in Paragraph 9 may be altered by mutual consent of the Greater Buffalo Press, Inc. and King Features, Inc., where the interests of both parties are mutually served. Any and all provisions of this contract may be changed by mutual consent and the mutual interest of both parties." This isn't the normal talk of one businessman writing to a customer. This isn't the normal business jargon. This is legal language, this is something that the Government submits—

The COURT: It simply means that it is subject to renegotiation if the parties feel it is of mutual interest.

3571 Mr. BERNSTEIN: Right.

The COURT: What is so legalistic about that?

Mr. BERNSTEIN: I am using it to point out that the defendants argue that these don't show the reaching of an understanding because it was not a formal contract. I am saying the parties must have reached such a point of negotiation that they were talking about precise language that could go into a contract. That is the kind of an understanding that forms the basis of concerted action or combination in restraint of trade. That is the only point that I am making.

The next point is that now we get to the tie-ins on the part of NEA, and this goes only to NEA. The only reason that the Government asks the Court to find that NEA violated the anti-trust laws—

The COURT: That is what counsel already said before, isn't it? I heard that argument before.

Mr. BERNSTEIN: On tie-ins?

The COURT: Yes.

3572 Mr. BERNSTEIN: Today?

The COURT: I thought I did.

Mr. BERNSTEIN: No.

The COURT: All right, go ahead.

Mr. BERNSTEIN: I want to make this point, the tie-in point is developed adequately in the brief, and I don't want to take up the Court's time, it is not necessary, the Court itself mentioned before that it is fully familiar with this branch of law in the Trico case where you tie in a patent.

The COURT: I am not sure about fully familiar, I have sure heard of it. Go ahead.

Mr. BERNSTEIN: I respectfully refer the Court to our briefs for the detailed explanation of this phase of the case, and I won't elaborate on it except to say this, to give you the gist of the Government's position, and the gist of the issue between NEA and the Government—

The COURT: Mr. Feldman's point was on NEA, not the tie-in. Go ahead.

Mr. BERNSTEIN: The Government contends that what NEA did is an understandable business practice, it made up make ready, it made up a page like this, four page, six

3573 or eight, then it went around to several newspapers and it changed the masthead. It had the same features in some instances, in other instances the newspapers would say give me the same thing just change this feature on Page 3, and then in another one they would say the same thing, change the feature on Page 2, and so forth. Although it is a makeready, it really is a custom-made product. What NEA did was it would put together a package for features, and it said to the newspapers for X dollars you will get this color comic supplement and you will get this editorial article, and you will get, and so forth and so on, and there was a unit price for it. The newspaper didn't know what part of that unit price was applicable to the printing and what part was applicable to the features, and so on. There is nothing so inherently wrong about it, the anti-competitive effect comes out in this way, every one of those features is copyrighted so NEA has a lawful monopoly on the licens-

3574 ing of any one of those features, and when readership develops for any one of the comics—even though you and I might regard this as an unfunny comic, there is a certain number of people develop a readership for this—the only place they can get it is NEA. When NEA says in effect that the only way you can get these features is if you take the whole package, that means you don't buy the printing from someone else, as long as you get the printing from us, you buy the printed supplement from us, you will get the features at this price, if you just want the features then the price is higher. So we see the abuse that came in in the case of King, through Mr. Koessler's testimony, and all the Government is trying to do here is to prevent the same kind of abuse from setting in in the event this Court orders divestiture, and in the event Greater Buffalo becomes NEA's printer, then the Government contends that this illegal practice should be curtailed, and NEA should be prohibited in such event from this kind of an arrangement

3575 unless it informs the newspapers at the time it does it that in this unit price this is the amount of the printing, this is the amount of the features, so that the newspaper at any time can go to another printer and say, I can get the features for so much, how much are you going to charge me for the printing, there is that opportunity for competition. Thank you very much.

The COURT: All right. Now, gentlemen, what is your pleasure? Shall we get this over and done and have a bite to eat later?

Mr. RAICHLE: Whatever suits the convenience of the Court.

The COURT: I am willing to sail on here. I thought maybe it would be wise—I think probably you would like to get on the road at a reasonable time. Give me a rough estimate of your combined time in your judgment, you, Mr. Stevens, and you, Mr. Raichle.

Mr. RAICHLE: I don't have in mind more than a half hour myself.

Mr. STEVENS: That would cover both me and Mr. Karch, I believe.

The COURT: Supposing we take a short break and then
3576 we will resume.

(Thereupon the Court was in recess at 1:00 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 1:20 p.m.)

The COURT. Yes.

Mr. RAICHLE: Your Honor, let me start with a few fundamentals. Also let me take you back to Mr. Feldman's discussion of the law with respect to the application of Section 7. I was quite confused by what he had to say, and quite reassured, however, that your Honor was thinking clearly on the subject. As I listened to him I got the impression that he was contending that there was some hard and fast rule with respect to the percentage owned, or percentage acquired, or percentage enjoyed by those engaged in a certain line of business, which forbid them to grow bigger, acquire a larger percentage, or merge or acquire another company of any percentage. Let us
take the Brown Shoe case, the one that he cited himself.

3577 Let me read you the pertinent excerpts. This is the United States Supreme Court in the Brown Shoe case, and I don't mean anything personal or invidious, but it would seem to me that if counsel were going to cite from the case, he ought to have been fair enough to read the provision that I am going to read. The Court said: "While providing no definite quantitative or qualitative tests by which enforcement agencies could gauge the effects of a given merger to determine whether it may substantially lessen competition or tend toward a monopoly, Congress indicated plainly that a merger had to be functionally viewed—here come the important words—in

the context of its particular industry." That takes us back to your Honor's observation about the bank or banks, and regulated industry, access to the industry, with limited numbers permitted to engage in it, and so forth, as contrasted with this printing business that any newspaper in the country can get into if it wants to. Let me read further from the Brown Shoe case, and this I think is a point of departure between counsel and myself. "Taken as a whole," says the Supreme Court, "the legislative history illuminates congressional concern with the protection of competition, not competitors, in its desire to restrain mergers only to the extent that such combinations may tend to lessen competition." That is pertinent to your inquiry about who has been hurt, who is it claimed by the Government has been hurt, indeed you might say who hasn't benefited by what has been done.

To go back briefly to the origin of this case, it had a strange origin in the light of subsequent developments, a man named Hornady worked under Nicht for King Features, and learned the influence of the tie-in of the features with the printing. The time came when he was sent down to Newport News or that vicinity to investigate a certain situation on behalf of King Features, at the direction of Nicht. The first thing you know, he abandoned Nicht and King Features, and went to work for the company he was supposed to investigate, Atlantic Color Printing. Knowing all the secrets of the order, in the sense the order being King Features, Hearst, he began to complain about the things that he used to do. A lawyer writes a letter threatening anti-trust activities if King Features doesn't cease and desist, no complaint about Greater Buffalo. In the course of time, Hornady goes to the Department of Justice and lodges a complaint against King Features for whom he used to work. Depositions are taken, in the course of which he testifies that he knew of no predatory or illegal action on the part of Greater Buffalo Press. The whole thrust of his complaint, the origin of this case, being against King Features. Then came that remarkable change in the attitude of the Government, and in the thrust of the case, from a complaint about King Features and its tie-in of features with the printing, and the requirement that the printing be done under its agencies if the newspapers were to get the features. Now, in the meantime, and I'm not going through the long suc-

cess story of Greater Buffalo Press, but Greater Buffalo Press from its humble origin was proceeding upward, and in the 1950's or thereabouts King Features began to feel its competition, and while I am on that subject I depart to say that Greater Buffalo Press wouldn't care today if King Features would build its own printing plant and compete, nor would it care if the other defendant did the same thing, Newspaper Enterprise, NEA, if you please. If it were a proper case and there were any basis for it, I assume that Greater Buffalo Press wouldn't care if there was an injunction saying they could not print for King Features or for NEA, but this is not such a case.

Now, what happened? Let's start with the order of things the way that the Government started. First we will discuss Section 7 of the Clayton Act, as amended, as presently enforced.

I pointed out that each case is to be decided on its own
 3581 facts. There is no formula. It is competition and not competitors, as such, Section 7 doesn't exist for the likes of King Features, it doesn't exist for the protection of wrongdoers, it exists for the protection of the victims. For years International had printed, printed for King or Hearst alone. I don't know what the right phrase is, a captive plant would be the equivalent of a division, in effect, or whether you would regard it as a printing plant; in any event, all of its facilities were devoted to the production, all of its output went to King, and King over the years ground it down, as far as price for product was concerned, and rode the tired horse to the point of exhaustion, and in 1955 International was, within the meaning of the cases, within the spirit of the law, within the letter of the opinions, a so-called failing company, a defense to which we
 3582 do not have to resort, but since it is a good and valid defense, one which has been asserted, one alluded to by them, let's see if we can't correct our friends with respect to the law.

I think Mr. Bernstein said, or one of these gentlemen said, that a company didn't come within the rule of the failing company unless it was insolvent, It is said here they were paying dividends. The payments of the dividends over the years may have contributed to the pending insolvency, the inevitable insolvency, but insolvency isn't the test. The cases are cited in our brief, Pages 103, 104 and 105, and I point out that the Court said in this case, a case very often cited, that of United

States vs. Diebold, where that acquiring company acquired a safe company, and it didn't show a deficit in working capital, its quick assets exceeded its current liabilities at the time of the acquisition, but it was deteriorating and in the course of time it was indicated it would indeed fail, and the Court was

concerned with whether there were any other purchasers.

3583 In our case there was a deficit in working capital. In our case the earnings on an eight million dollar enterprise shrunk to something like seven thousand dollars for the year or thereabouts, and Gorman, who knew more about it than anybody else, could see the inevitable, and the company was offered to King Features. Nicht urged its purchase but Hearst wouldn't make the investment. It couldn't be sold to anybody. When Koessler was approached by Gorman, not by Nicht, not by King Features, he said he would purchase it or Greater Buffalo would purchase it, as it had a clear right to do, not only on the failing company theory, but it had a clear, untrammelled right to do so. What did it buy, it purchased some out of date machinery, updated it with its know-how, put money into the enterprise, carried out the obligations of International, increased employment, provided a flow of money into a community which needed it very much. If your

Honor's recollection goes back to the early days when
3584 there was fear expressed by the union people that a transfer of runs in the event of acquisition by Greater Buffalo might further depress an already depressed area. Now, I pause to say that obvious benefits flowed to the community. Now, what happened down in Sylacauga? Employment was provided and money flowed into a community which theretofore did not have either, a great benefit resulting from the opening of Sylacauga, and you could say the same thing about Lufkin, Texas.

Now, counsel has not pointed to one iota of competition which he says has been suppressed by the purchase of International. In the first place, International and Greater Buffalo were not competitors, this isn't the kind of an acquisition contemplated by the Act, that is, International didn't go out and solicit from newspapers, Koessler did, and never was it regarded that Greater Buffalo and International were in competition. Koessler or Greater Buffalo was in competition with

3585 King Features and not with International. So that it doesn't even come within the purview of Section 7, no matter how you stretch it. Now then, still on the subject of what competition has been restrained, the Government doesn't say. It seems to suggest some fugitive competition but it is unidentified. All of the companies that were in existence in 1955, at the time of the acquisition, are in business now; Eastern Color, whatever the name of it is, in New England; Atlantic Color Printing in Newport News; Acme on the Coast; Star, and the others that have been mentioned.

Now, who else has derived a benefit from what has been done, the converse of the proposition who has been hurt, and bearing in mind, as I read from the Brown Shoe case, it isn't the competitors who are to be protected by the Act, it is competition, and in the last analysis the consumer, and the consumer here are the newspaper customers of Greater Buffalo Press and these other companies. The most remarkable thing in the whole case

is the fact that the Government would be assailing
3586 Greater Buffalo Press, who hasn't raised a price in twelve or fourteen years in the face of unprecedented inflation which is engrossing everybody's attention and instilling fear everywhere. When we think what a dollar bought in 1955, when we think what labor rates were, what material costs were twelve, fifteen years ago, and how they have increased, and think of the fact that Greater Buffalo Press has not raised a price during all that period of time, and it is a remarkable thing, to use the word again, that every dollar of saving accomplished by the erection of the costly plants by Greater Buffalo Press in Lufkin and in Sylacauga have been passed on to the newspapers who favored Greater Buffalo with their business, an undisputed fact in the case.

Nobody could be serious about any claimed divestiture of Lufkin. Lufkin was conceived in 1952, three years before the acquisition, three years before the alleged conspiracy.

3587 The land was bought in 1952 or 1953, construction was started sometime in 1955, before the acquisition of International, and it was conceived and constructed and operated largely for the benefit of the saving which would result in transportation costs to the newspapers in that general vicinity, and that saving has been theirs.

Now we come to Sylacauga, and how counsel can claim that Sylacauga has any relationship to an alleged violation of Section 7, or to an alleged conspiracy, nebulous and always changing in character, I don't know. The record shows, if your Honor will recall, that as early as 1949, I think it was, Greater Buffalo was considering a plant in this general locality, in the south. Kenneth Koessler went down to places like Chattanooga and elsewhere and made investigations. The record will show that this Coosa River printing plant came to Koessler long before he had the opportunity, if such it be, to acquire International, and the plans were made for the operation of a plant in
 3588 that general vicinity. Again, you go back to the proposition that King was offered by International all the opportunities that would flow from a purchase of International or the providing of sufficient working capital to permit International to function and itself open a plant in the south.

Now, so much for the alleged violation of Section 7. As I say, there are no percentages to be applied, each case is to be decided on its own value. I don't want to leave the subject without stating unequivocally that my friends are mistaken, they were not reading from the so-called Gorman report, they were reading from a review of figures derived in part from the Gorman report by a Government lawyer or a Government agent, and I know the figures wouldn't stick in your Honor's mind if I went through them one by one now, but there is no such thing as any 75%, the percentages are in the vicinity of
 20% for Greater Buffalo Press, if you take the applicable market. Again, I am repetitious, but it sticks out
 3589 and stalks through this whole case, not only from the testimony of Hornady on the subject, and he was certainly a hostile witness, at least hostile to King, Hornady himself said, and other witnesses, experts, have told your Honor a fact that is important, that is the easy access to this market. Any newspaper can go into this business if they want to spend a little money, they have the facilities. It is only because Koessler can beat them on price with his efficiency, which counsel concedes is not a crime, that they favor him with their business.

Now, this conspiracy talk—I want to hurry along here—is so bizarre, it is so nebulous, to use the word again, that it is hard to deal with. Now, I will cheerfully concede that there was a time

when Nicht, with his enormous power born of his ownership of the features and his control over the licensing of the same, sought to extort from Koessler some sort of an agreement which might well be said to violate the anti-trust laws, and I will say that Koessler did what anybody under the circumstances would understandably do, he began to show concern, or if not show concern, he began to palter with the situation, and there were some conversations about various matters and things, a get-together between King and Greater Buffalo Press, but when the realization came to Koessler of what was really being proposed, what was really being demanded by Nicht, he would not go for it, if I might use vernacular, and his directors and himself decided they would not sign the contract, and the same was abandoned. That is some fifteen years ago, but there isn't a word anywhere that during that period of time the provisions of the proposed contract and the talked about relationship were adhered to.

Now, my friend likes to use words like "kickback", that Koessler kicked back to King and Nicht. Well, the story is very simple. In order to get the features in certain places, five in number out of three hundred, Nicht succeeded in extorting some weekly payments. When you use extortion you don't enter into a conspiracy, you become the victim of a conspiracy, and it is the wrongdoer, if any, in connection with this alleged conspiracy that my friend seems so anxious to help. Incomprehensible that the Government attorney could stand here and ask that Koessler, who has done so much good in so many communities by honest business practices, and who has benefited consumers and customers, who hasn't raised his prices in years, the hallmark of monopoly, the same lawyer who abandoned the monopoly charge on the eve of trial would now come around and in one way or the other say that you should take the Lufkin plant, you should take the Sylacauga plant, you should take the Wilkes Barre plant, and by some machinery make it possible for the principal defendant, who has skulked out of this case, to acquire the same. Never, in my more years than I like to mention out loud at the Bar, have I heard it contended by Government lawyers that the wrongdoer should become the beneficiary, and that the victim should be the one circumstanced as Greater Buffalo Press. The last time we were here, in the course of some argu-

ment, Mr. Bernstein admitted, it is in the record, that we were the victim and not the wrongdoer. Now, time heals a lot but time doesn't change the truth. What was true, what was a fact five years ago when this case was tried, two or three years ago when it was briefed, nothing has changed, and after all these years to suggest there should be a divestiture and an injunction and all the harsh sanctions imposed against Greater Buffalo Press is one of the most unjust claims that I have ever heard asserted.

I could take your Honor through, imposing upon your patience, this long story in all its detail, with every detail reflecting credit rather than obliquity on the part of Greater Buffalo Press. I refrain from doing that, it is in the printed briefs, it is in every line of the testimony, and when my friends stand
3593 here, and under your Honor's general questioning, have to admit this isn't wrong, that isn't wrong, there is nothing wrong with this, there is nothing wrong with that, but somewhere, somehow, there was a conspiracy, and after fifteen years they can point to no one who was adversely affected, let alone hurt, and one little thing—sometimes it is the straws that show the way the wind is blowing—they criticize, in connection with the purchase of International, the purchase of the press from Baltimore, which your Honor alluded to. It turns out that Greater Buffalo Press purchased half of it; and who purchased the other half? Hornady's crowd, the complainant. I don't know why we couldn't purchase half of it. I have to make this disjointed and not follow a smooth, well-organized argument because I have to answer the things that they talk about, and they are the ones to hop from pillar to post, so in an attempt to catch up to them I have to do the same thing.

3594 Now, I think I have said enough. I challenge my friends again, in all good humor, and professionally, to point out one person who has been adversely affected by anything claimed by them to have been done by Greater Buffalo Press, alone or in concert with somebody else. They can't do it. They say, 'Oh, we don't have to do that, it is the potential.' The potential that hasn't asserted itself in fifteen years must have atrophied and be pretty well dispelled. Until there is something more to answer, that is all I have to say.

* * * *

3595 Mr. BERNSTEIN: If your Honor will indulge me three minutes, I have two points. A minor point with respect

to Mr. Stevens' statement that in January 1956 the evidence shows that Greater Buffalo said to King, "You will be the exclusive seller, we the exclusive printer," therefore that proves they didn't contemplate NEA would join. I wanted to point out that the other surrounding documents show that after NEA had sold its accounts to Greater Buffalo then the succeeding documents said, "You be the exclusive seller except for the Scripps-Howard newspapers or NEA accounts." But the most important point that I wanted to make at this time was Mr. Raichle's challenge to show somebody was hurt. That is a very, very important part of the case. I agree wholeheartedly with Mr. Raichle's statement about the Brown Shoe case, that Section 7 concerns itself only with competition, not with competitors. The reason it does is because Congress decided that competition is such a basic, fundamental principle of our economic system that inherent in that is every time competition is preserved the consumers benefit, every time competition is destroyed the consumers are hurt. That is why we didn't parade witnesses to show what individual consumers or what individual competitor was hurt, it was competition that was hurt, it was competition that has been substantially lessened. That is the summary of the Government's case. Thank you very much.

3508 [Caption Omitted in Printing]

FINDINGS OF FACT

This action arises out of a complaint filed by the government in January 1961, charging certain defendants with violations of the Sherman and Clayton Acts. The complaint charged that Greater Buffalo Press, Inc. (hereinafter Greater Buffalo) engaged in a conspiracy with the Hearst Corporation (hereinafter Hearst) and Newspaper Enterprise Association, Inc. (hereinafter NEA) to restrain interstate commerce in the sale of color comic supplements by refraining from soliciting printing business from each other's customers and by maintaining and stabilizing the price of color comic supplement printing in violation of section 1 of the Sherman Act. The complaint also charged the same defendants with engaging in a conspiracy to monopolize color comic supplements in violation of section 2 of the Sherman Act, and Greater Buffalo is charged with violation of section 7 of the Clayton Act (15 U.S.C. § 18) regarding its 1955 acquisition of the outstanding stock of defend-

3599 ant International Color Printing Corporation (hereinafter International), since it is alleged that the acquisition constitutes a substantial lessening of competition and tend to create a monopoly with regard to color comic printing in the United States. Lastly, the defendants Hearst and NEA were charged with violation of section 3 of the Clayton Act (15 U.S.C. § 14), for allegedly selling comic features to newspapers at discounts on the condition that the newspaper purchasers shall not deal in comic printing services sold by their competitors. The litigation arises out of a claim filed with the Department of Justice on behalf of Atlantic Features that King Features was combining the licensing of its copyrighted features with the sale of the printing of the color comics in violation of the antitrust law.

After the complaint was filed, the defendant Hearst entered into a consent decree with the Department of Justice which in effect withdrew the charges against Hearst and provided that King Features may continue to engage in the practice of combining the sale of features and printing *until the court shall determine the antitrust issue as to Greater Buffalo*. The decree also provided that Hearst shall obey the antitrust laws during the pendency of the action. No reason has even been presented by the Department of Justice to explain the significant change of heart toward the defendant Hearst. Any attempt by the court to explain the conduct would be inappropriate in view of the court's lack of knowledge of the facts and circumstances surrounding that decision.

After the entry of the consent decree and prior to the taking of testimony, the government amended its original complaint by striking the allegation of monopoly against Greater

3690 Buffalo. There remain, therefore, conspiracy charges against NEA and Greater Buffalo under sections 1 and 2 of the Sherman Act, an alleged violation of section 7 against Greater Buffalo arising out of the International acquisition, and a violation of section 3 of the Clayton Act against NEA regarding tie-ins.

Greater Buffalo is a New York corporation with facilities in Buffalo and Batavia and is in the business of commercial printing, including color supplements and color comic supplements for insertion in newspapers, and is engaged in the production of goods for shipment in interstate commerce. South-

west Color Printing Corporation (hereinafter Southwest Color) is a Texas corporation, having its principal place of business in Lufkin, Texas. Dixie Color Printing Corporation (hereinafter Dixie Color) is an Alabama corporation with its principal place of business and facilities at Sylacauga, Alabama. Both Southwest Color and Dixie Color are wholly owned subsidiaries of Greater Buffalo.

International is a Pennsylvania corporation, having its principal place of business and facilities at Wilkes-Barre, Pennsylvania. Prior to June 1955, its sole business consisted of the printing of color comic supplements for the account of King Features Syndicate (hereinafter King), a division of Hearst. Greater Buffalo acquired all of the common capital stock on June 25, 1955, and since that time it has been engaged in the printing of color comic supplements for the account of King and both color comic supplements and commercial printing on contracts held by Greater Buffalo.

NEA is a Delaware corporation, with its principal place of business at Cleveland, Ohio, engaging in the business of licensing copyrighted newspaper features, including color comic features, to newspapers, and selling color comic supplement printing of copyrighted comic features to newspapers. Prior to 1955, NEA owned the stock of Buffalo Color Press, Inc. which owned and operated printing facilities in Buffalo, New York, and printed color comic supplements for NEA and one other newspaper. In 1955, its assets were sold to Greater Buffalo. Apart from its connection with Buffalo Color Press, NEA is not engaged in printing color comic supplements, but subcontracts such printing to other printers.

The Hearst Corporation is a Delaware Corporation with its principal place of business in the City of New York. It is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers through its New York division, King. It has also been engaged in the business of selling color comic supplement printing of copyrighted comic features to newspapers.

THE INDUSTRY

Color comic supplements are newsprint printed with colored ink containing reproductions of copyrighted color comic features, advertising material and other types of features. Each

supplement page receives four impressions of ink which requires an exacting job of alignment and adjustment for each impression. A great deal of skill and expertise is necessary to be proficient in the printing of such supplements, and the higher the degree of skill, the finer the end product and more desirable the supplement in appearance and readability. Necessary to this process is the use of skilled personnel and stereotype equipment and other machinery.

Some newspapers print their own comic supplements. Many more are printed by color comic printing companies. The 3602 newspapers which do not print their own color comic supplements are capable of doing so but have found it to be to their economic advantage to purchase them. There is every reason to believe that if at any time the cost of purchasing such color comic supplements exceeds the cost to the newspaper of printing them, the newspapers will do the printing themselves.

There are, therefore, three ways which a newspaper can obtain color comic supplements (hereinafter supplements):

1. Print its own supplements;
2. Contract directly with color comic printers; and
3. Contract with concerns which do not themselves print the supplements, but have arrangements with printers to print such supplements and deliver the same to newspapers.

Contemporaneously with contracting for the purchase of supplements, newspapers contract for the purchase of rights to the copyrighted comic features which appear in such supplements and, in general, the fees charged for the licensing of features are not pursuant to published price lists, but are arrived at after bargaining negotiations between the newspaper and the licensor. In attempting to obtain specific features, a newspaper is limited to those which are not already licensed under an exclusive arrangement with other newspapers in competition with it.¹

¹ The court takes judicial notice of the fact that, after the closing of testimony in this case, the Department of Justice filed a complaint in the United States District Court for the Southern District of New York in an action entitled "United States of America v. The Hearst Corporation" No. 67 Cir. 4598, which charges the Hearst Corporation with a violation of section 1 of the Sherman Act in that for the past many years it has entered into contracts through its King Features Syndicate Division with newspapers for the exclusive licensing of the features within an arbitrary and unreasonably broad territory surrounding the newspaper's city of publication.

3603 For the past many years and continuing to this day, King has ruled the licensing portion of the color comic supplement industry. It controls the licensing of at least fifty copyrighted comic features, including the most popular comic features which are used by major metropolitan newspapers. Moreover, other features such as the writing of columns, which are essential to the circulation of large metropolitan newspapers, are controlled by King. Prior to 1955, King exercised dominant control over the printing of color supplements but since that time its position in the sale of printed supplements has been challenged by independent printers as well as syndicates.

Since approximately 1926, until very recently, Greater Buffalo has been owner, operated and controlled by Walter Koessler, now deceased, together with his brother Kenneth and other members of his family. The growth of the company has been financed entirely out of earnings derived from the business. During this entire period of time, the business has grown and become a model of efficiency in the industry. This is due to the fact that Mr. Koessler personally developed the mechanical techniques for the rebuilding of color printing presses, including the system of pre-registry, which resulted in greatly increased efficiency in the operation of such presses and improvement in the quality of the product at reduced cost in printing. Walter Koessler was a mechanical genius. The improvements developed by him in the printing of color comics, although not protected by patents, have not been duplicated by any manufacturer of printing presses or any other printers and because of this Greater Buffalo has alone been able to make great strides in improving color printing presses. As a

3604 result, Greater Buffalo has at all times enjoyed a distinct competitive advantage over other printers which is a result of the skill, diligence and efficiency of Walter Koessler and not the result of any illegal agreement or design to violate and provisions of federal law. The competitive advantage enjoyed by Greater Buffalo continues to this day. Greater Buffalo, as compared with King, has no control over the ownership of features and has never engaged in their licensing. Consequently, it has never been in a position to offer the smaller newspaper a so-called "ready-print" supplement section, which is a pre-printed supplement section supplied to many newspapers with only masthead changes, thereby shar-

ing the printing among a number of newspapers which, because of the longer runs of this type of supplement, reduces to the individual newspaper the unit cost of such supplements. Both King and NEA are extensively engaged in this type of ready-print section. In recent years Greater Buffalo has obtained many contracts for the printing of color comic supplements solely by reason of its lower prices and the quality of its work. These contracts have come principally from newspapers previously engaged in printing their own supplements. The contracts provide for printing at uniform rates subject to cancellation by either party on ninety days' notice. They also provide that the transportation charges will be paid by the newspapers.

Prior to 1955 and to this day, all of the following companies, among others, have been and still are in competition with Greater Buffalo in the printing of color comic supplements, as well as the sale of such printing to newspapers and syndicates: Acme Color Printing Company, Eastern Color Printing Company, Star Color Printing Company, Southern Color Printing Company, World Color Printing Company.

There has been no evidence presented to this court which would support a conclusion that Greater Buffalo controlled such a share of the market as would tend to create a monopoly or monopoly power. In recent years the color comic supplement industry has suffered from the competition of television; the substitution of other types of supplements, such as TV Topics, printed by the newspapers themselves; and the discontinuance of the publication of large numbers of newspapers. It is not a growing industry. The discontinuance of newspapers has resulted in a surplus of printing facilities and equipment, and this, together with the existing facilities of modern newspaper plants adaptable to the printing of color comic supplements, has minimized the barriers to entry into the color comic supplement printing industry.

Examining all the testimony and the relations between the parties, the court finds that the significant lines of commerce involved in this action should be divided into two distinct and separate categories: (1) the printing of color comic supplements for newspapers which do not print their own, and (2) the printing of color comic supplements for syndicates engaged in the sale of copyrighted comic features to newspapers. These are the lines of commerce—to treat them together as one line

of commerce, i.e., the printing and sale of color comic supplements, would be to ignore the tremendous leverage of the syndicates which control the copyrighted features. The testimony of Walter Koesler and other witnesses in this case has established firmly that the syndicates, and in particular King, have a unique position by virtue of the legal monopoly which they have over the copyrighted features. The court is of the opinion that the peculiar characteristics and business uses of copyrighted features justify considering printing for syndicates as a separate product market. See *Brown Shoe Co. v. U.S.*, 370 U.S. 204, 325 (1961).

THE CHARGES OF THE COMPLAINT

The evidence² indicates that Greater Buffalo and King engaged in active competition for the business of printing color comic supplements. Because of King's control over licensing of both comic and general features, Greater Buffalo has been at a disadvantage in meeting King's competition.

In certain instances, such as the Waterloo, Iowa, incident, the power of King to withhold the licensing of comic features to newspapers, to which Greater Buffalo was supplying the color comic supplements, required Greater Buffalo to make weekly payments to King to satisfy demands of Nicht, the chief

² During this trial, the court reserved decision concerning the admissibility into evidence of certain documents offered on behalf of the government. In general, these documents are memoranda circulated between executives of King and, in some cases, are personal memoranda of Mr. Nicht of King. Some of these documents have been offered on the theory that they are statements of co-conspirators made in furtherance of and in the course of the conspiracy. Mindful that there must be independent evidence that the alleged co-conspirator was a member of a conspiracy before statements in furtherance thereof are admissible, and viewing the evidence in the light most favorable to the government—and viewing only the government's evidence, the court finds sufficient evidence to infer the alleged membership in the conspiracy which warrants the allowance of these documents into evidence. Greater Buffalo strenuously objects to the admission into evidence of both the memoranda of Nicht to his superiors and his memoranda for his personal files. Since these memoranda in the main concern events testified to by Koesler or verified as to substantial accuracy by Koesler, or in some instances concern subjects about which Greater Buffalo has offered similar exhibits (P. 77 P. 88) (Tr. pp. 1008-1010), the court admits these documents into evidence as being of some probative value concerning the state of mind of Nicht at the time the events took place. Cf. *United States v. Corn Products Refining Co.*, 234 Fed. 964-978 (S.D.N.Y. 1956), appeal dismissed on stipulation, 249 U.S. 621 (1958). See also *United States v. United Shoe Machinery*, 80 F. supp. 249, 255 (D.C. Mass. 1950).

executive officer of King. These payments were not made as the result of any agreement between Greater Buffalo and King with respect to the division or allocation of business or customers. Moreover, in some instances the newspapers themselves decided to split contracts between King and Greater Buffalo because of transportation savings which could be realized. Specifically, this was done by the Channett papers for the Ulen and Binghamton papers. Evidence that a customer has elected to divide his business for economic reasons does not establish an agreement between King and Greater Buffalo to allocate customers between them.

Between 1955 and 1958, Nicht attempted to secure an agreement restricting competition between King and Greater Buffalo. Kossler, knowing King's dominant position and its power over Greater Buffalo's customers, led Nicht to believe that Greater Buffalo was willing to negotiate such an agreement but, since Kossler was aware that such an agreement would be detrimental to Greater Buffalo, no agreement was ever reached with respect to monopolizing the printing and sale of color comic supplements, fixing prices, or allocating customers. Prior to 1955 and continuing to date, Greater Buffalo has competed with King and has obtained contracts from newspapers for printing formerly under contract with King and has been and still is in competition with NEA for the printing of color comic supplements. Greater Buffalo's competition with

NEA has been restricted, since Greater Buffalo has not been and is not engaged in the sale of ready-print sections which is NEA's principal source of business. The acquisition of the assets of Buffalo Color Press, Inc., a NEA subsidiary, by Greater Buffalo in 1955 has not affected the competition between NEA and Greater Buffalo, nor has the contract between the two for the printing of color comic supplements by Greater Buffalo for the account of NEA. Moreover, during this time King and NEA engaged in competition for the licensing of color comic printing and color comic features and the printing of color comic supplements. Greater Buffalo, printing for both concerns, received complaints from each with respect to the competition of the other and attempted to mediate such complaints. However, at no time did Greater Buffalo enter into an agreement or understanding with either with respect to allocation of customers or solicitation of each other's accounts.

Since Greater Buffalo's contracts with newspapers provided that transportation costs would be paid by the newspaper, Greater Buffalo has for many years attempted to locate and had made plans for the construction of printing plants in the deep south and southwest. This was both to accommodate its existing customers in those areas by providing lower unit cost per color comic supplement by cutting transportation costs and also to obtain new customers in those areas by providing a higher quality product at a lower unit cost. In furtherance of this policy, a printing plant was constructed in the early 1950's in Lufkin, Texas, by Southwest Color. The construction and operation of this plant was undertaken and financed entirely 3600 by Greater Buffalo, and its establishment has resulted

in transportation savings to newspapers in the south-west. Some printing business subcontracted by King for printing at the Lufkin plant since 1958 has been done pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Lufkin printing. The subcontracting by King affords an economic advantage to King and its customers and is not in any way dependent or contingent upon any overall agreement between King and Greater Buffalo. The operation of the Lufkin plant by Southwest Color under the direction and control of Greater Buffalo has not restrained competition in the color comic printing industry, nor has it disadvantaged any other company in the industry or tended to create a monopoly.

The establishment of a printing plant at Sylacauga by Dixie Color was in execution of plans made by Greater Buffalo in 1947 and a commitment made in 1950 to its customers in the area. Construction and operation of the plant were undertaken and financed entirely by Greater Buffalo without any contribution by any other company in the industry. The establishment of that plant has effected transportation savings to newspapers in the south and preserved competitive prices in the area over the period since its construction.

The printing business placed by King for printing at the Sylacauga plant since 1963 has been produced pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Sylacauga printing and are entirely different than the price schedules that prevail for the printing of King

3610 Contracts at International. The printing business sub-contract for printing at Sylacauga offers an economic advantage to King and its customers and is not in any way dependent upon any overall agreement between King and Greater Buffalo.

International had previously investigated construction of a plant at Sylacauga and had entered into negotiations with civic groups for a plant site and with the Coosa River Paper Company for a supply of newsprint, but it had never entered into any commitment to construct such a plant because it had no means of financing it. From the evidence it appears that the major stockholders of International were in no way desirous of investing further capital for the establishment of such an operation. The civic groups and the newsprint supplier were willing to transact business with any corporation prepared to finance and construct a plant. Although Greater Buffalo may have utilized to some degree the services of International officers after its acquisition of International, the funds advanced were from earnings generated by the innovations and improvements made by Greater Buffalo in the Wilkes-Barre plant. The advances were repaid prior to the time any claim was made by the government that the Sylacauga plant was an asset of International. Construction and equipment of the Sylacauga plant were carried out at the direction of Greater Buffalo and were in no way dependent on the services of International or any of its officers or personnel. At the time its construction was undertaken, Greater Buffalo had contracts with newspapers in that area, and its construction constituted a calculated business risk which Greater Buffalo alone was willing to undertake because of the

supply of newsprint and the certainty of effecting transportation savings for Greater Buffalo newspapers in that area. The operation of that plant by Dixie Color has not restrained competition in the industry or tended to create a monopoly.

THE ACQUISITION OF INTERNATIONAL

Greater Buffalo and International have never been engaged in competition for the sale of color comic supplements to newspapers, since International has neither solicited nor held contracts with any newspapers. International's business was solely the printing of color comics for syndicates engaged in the sale of copyrighted comic features to newspapers. The acquisition

by Greater Buffalo of International in 1955 was not the result of any agreement between King and Greater Buffalo and was neither suggested, aided or abetted by King or any of its officers or employees.

In 1955, at the time of its acquisition by Greater Buffalo, the resources of International were depleted to the extent that it had a deficit in working capital of \$100,000. It had no means of securing financing for the construction of a southern printing plant and no means of modernizing its equipment. The owners of the corporation were anxious to sell the company and were continually demanding dividends in excess of the company's earnings. The owners were unwilling to invest capital toward expanding the operation of International or in any way investing in its development. The company's only customer (King) was placing some of its business with other printers, was threatening to take away more business, and was insisting on the construction of a substitute plant. The

company's contract with King was cancellable on six 3612 months' notice, and it had been unable to negotiate a new long-term contract at rates sufficient to enable it to finance improvements to other facilities and the construction of a southern plant. The company's resources were so depleted, and the prospect of its rehabilitation was so remote, that it faced the grave probability of a business failure. No other person or corporation was interested in purchasing International which was a failing company. Indeed, prior to its acquisition by Greater Buffalo, International had been offered to King, but King refused to negotiate for the purchase of the company at any price. Under these circumstances, in the light of its unwillingness to enter into a long-term contract with International at increased rates, there was nothing King could do to impede or prevent the sale of International to Greater Buffalo.

The acquisition of International by Greater Buffalo in 1955, had no reasonable probability of substantially lessening competition in the color comic supplement industry because International had no share of the market of printing color comics for newspapers and its failing financial condition foreclosed the possibility of its obtaining a share of the market and competing with Greater Buffalo. The business of King was in no way dependent upon International, since King had access to

the printing facilities of Hearst and the facilities of independent printers.

At the time Greater Buffalo purchased International, there was no agreement between King and Greater Buffalo or King and International for a long-term contract, and Greater Buffalo undertook the calculated business risk of operating International without such a contract in the belief that by the installation of its more efficient methods, it could effect savings in cost for International sufficient to attract the business of newspapers, as well as the syndicates, including King and NEA. Greater Buffalo did not acquire any additional share of the market of those engaged in printing color comics for newspapers which did not print their own by acquiring International.

Although, after the acquisition, International negotiated a long-term contract with King at substantially the same rates that had prevailed in its previous contract, that contract was not conditioned upon the acquisition of International by Greater Buffalo. The contract was negotiated by Gorman with little or no direction by Greater Buffalo. The court finds that after the acquisition Greater Buffalo vastly improved the facilities of the International plant by installing its improved methods of color printing. As a consequence of the improved methods and engineering skills of Mr. Koessler, International has operated at a profit since the acquisition and is a healthy economic unit. The acquisition by Greater Buffalo of International and its operation by Greater Buffalo over the past fifteen years have not resulted in the lessening of competition in the color comic supplement industry and, in fact, competition between Greater Buffalo, King, NEA, Southern, Acme, Eastern and the other companies engaged in the industry, has increased. Indeed, from all the evidence, it appears that the companies across the country have benefited, and that competition prevails in the industry unfettered by any agreement by any of the principals in this case.

In short, the evidence fails to factually establish the violations charged against the defendants. What meager evidence there is which points to alleged violations would, even if highly credited, be sufficient to warrant a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct.

3614 NEA AND THE ALLEGED TIE-INS CLAIMED TO HAVE
VIOLATED SECTION 3 OF THE CLAYTON ACT

The government also charges that certain syndicates have illegally used the copyrighted comics by tying in the license to use the comics with the contract for printing the supplements. Newspaper Enterprise Association, Inc. is charged in paragraph 28 of the amended complaint with violating section 3 of the Clayton Act.³ Although the court is of the opinion that, if proven, any agreement resulting in such a transaction as alleged would be a sale or contract for sale of goods or commodities encompassed within the purview of section 3, the court believes that the proof offered in this case would not support a finding of such an illegal tie-in.

The testimony and exhibits relied upon by the government in one portion of its tie-in proof, namely P-142 through P-146 and P-152 and P-153, concern negotiations which did not result in contracts with NEA for ready-print. Therefore, any price differentials which may have been reflected during
3615 these negotiations could not support a finding of a violation of section 3, but could only be used as corroborating other evidence of tie-ins. *United States v. Loew's, Inc.*, 180 F. Supp. 373, 380 (S.D.N.Y. 1960), modified on other grounds, 371 U.S. 38 (1962). Furthermore, exhibits P-149, 150 and 151 are evidence that NEA on one occasion reduced the price of the ready-print to a publisher who subscribed to its intermediate service, showing only that if a tie-in existed, it would be of printing to the intermediate service—not to copyrighted comic features. Other proof indicated that NEA refused Mr. Hornady permission to sell NEA comics as its agent because he was the representative of three of NEA's com-

³ "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." 15 U.S.C. § 14 (1914).

petitors, a decision which seems eminently sensible. The government also points to a situation wherein NEA "threw in Oop" to meet competition on its contract with Ponca Oklahoma City News. Although a consummate transaction, the government failed to prove that this had a conditioning effect, and the evidence shows that Oop (Alley Oop) was already included in its make-ready. Its effect was beneficial to both the newspaper and NEA. Moreover, the evidence on all of the transactions offered in support of the tie-in charges indicates that price differentials which may exist are legitimately justified by cost considerations. In reaching this conclusion, the court has closely examined the proof concerning the ready-print process. The inclusion in ready-print of certain comics selected by NEA, which can be sold as a unit to many newspapers throughout the country, results in a spreading of fixed costs overall to newspaper customers and an economic advantage to NEA of a lower unit price than could be charged profitably if each supplement was printed separately for each newspaper. The court has also considered evidence tending to show that if any newspaper decides not to buy the printing 3616 from NEA but wants any NEA comics, those comics are sold to the newspaper at the fair market price. Since a newspaper, in purchasing the ready-print, is limited to those features which NEA has previously selected and included in the ready-print, the price differential is justified by cost considerations and benefits to both the newspaper and NEA. The court, therefore, finds that the government has failed to prove the violation of section 3 of the Clayton Act regarding Newspaper Enterprise Association, Inc. regarding alleged tie-ins.⁴

⁴ This is not to conclude that the tie-in practice is not engaged in by certain syndicates controlling the licensing of color comics. The testimony at the trial of Mr. Koessler and others indicates that King Features had for a long period of time engaged in tie-in practices, and that such tie-ins seriously affected competition between Greater Buffalo and King. In fairness, it should be pointed out that King Features was not represented by counsel during these proceedings, did not cross-examine any witnesses regarding King's alleged tie-in practices, did not present evidence on its own behalf, or in any way take part in the trial, having previously agreed to a consent decree entered on the 31st day of August 1965. The terms of that decree provided in part: "V(B). Notwithstanding the making and entry of this final judgment, the plaintiff may, if the court adjudicates that the defendant, Greater Buffalo, has violated any of the antitrust laws as charged in the complaint filed herein, seek, and the court may order, such other relief as to the consenting defendant as the court may deem necessary and appropriate to dissipate the

1. This court has jurisdiction over the subject matter of this action between the parties.

2. Greater Buffalo and NEA have not engaged in any competition and conspiracy with Hearst or each other or any other person or corporation to refrain from soliciting color comic supplement business from one another's customers and to maintain and stabilize the price of color comic supplement printing in the United States.

3. Greater Buffalo and NEA have not violated section 1 of the Sherman Act as charged in the complaint.

4. Greater Buffalo and NEA have not engaged in any competition or conspiracy with King or each other or any other person or corporation to monopolize trade and commerce in the color comic supplement industry.

5. Greater Buffalo and NEA have not violated section 2 of the Sherman Act as charged in the complaint.

6. The acquisition by Greater Buffalo of International has not resulted and will not in the future result in a substantial lessening of competition or tendency to create a monopoly with respect to the color comic supplement industry, and such acquisition by Greater Buffalo did not constitute a violation of section 7 of the Clayton Act.

7. NEA has not sold comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors.

3618 8. NEA has not violated section 3 of the Clayton Act as charged in the complaint.

9. The defendants, Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enter-

effect of the unlawful activities that may be found by the court, and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements . . ." [Emphasis added.] Since the court, as outlined in this memorandum, has not found the defendant Greater Buffalo violated any of the antitrust laws as charged, the court has no power under the terms of the judgment entered August 31, 1965, to enjoin the defendant Hearst from engaging in any tie-in practice which may be revealed by the evidence.

prise Association, Inc. are entitled to a judgment dismissing the complaint.

Enter judgment accordingly.

/s/ John O. Henderson,
JOHN O. HENDERSON,
United States District Judge.

MAY 26, 1970.

3619

[Caption Omitted in Printing]

JUDGMENT

This action came on for trial before the Court, Honorable John O. Henderson, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint be dismissed as to defendants Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enterprise Association, Inc.

Dated at Buffalo, New York, this 26th day of May, 1970.

ROLAND E. LOGEL,
Clerk of Court.

3620

[Caption Omitted in Printing]

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES BY THE UNITED STATES
OF AMERICA**

Notice is hereby given that the United States of America, plaintiff herein, appeals to the Supreme Court of the United States from the judgment entered May 26, 1970, dismissing the complaint in this action.

LEWIS BERNSTEIN.
Attorney,
Department of Justice.

1707

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Supreme Court of the United States

No. 821

October Term, 1970

UNITED STATES, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

*APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW
YORK*

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

JANUARY 11, 1971.

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PUBLISHER'S NOTICE

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the best copy available to publisher.**

232 EAST 42ND STREET
NEW YORK CITY

ALL COMMUNICATIONS MUST BE
ADDRESSED TO KING FEATURES SYNDICATE



June 5, 1940.

International Color Printing Co.,
North End Station,
Wilkes-Barre, Pa.

P-6 FOR SENT.
P-6 IN CVD.
U. T. HALL
OFFICIAL REPORTER
U. S. DISTRICT COURT

Gentlemen:

This is our acceptance of the terms outlined in your letter of June 1, 1940, which has the effect of extending our present printing contract with you, with the following modifications:

The second paragraph of your letter dated June 1, 1940 reads as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements."

We think this paragraph should read as follows:

"International Color Printing Company is to print comic supplements exclusively for King Features Syndicate while King Features Syndicate purchases from International Color Printing Company at least seventy-five (75%) per cent of its supplement printing requirements, except in the event of emergencies such as the possibility of a newsprint shortage, strikes, or other plant difficulties."

Your acknowledgment of and agreement to the change proposed above will have the effect of making your letter of June 1, 1940 a binding agreement between us.

Very truly yours,

KING FEATURES SYNDICATE, Inc.

J. H. H. H.
President.

READY PRINT SURVEY
ALABAMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ANNISTON STAR	S.C.	17,801	8 STD.	35,602
DOYAN EAGLE	B.C.P.	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	B.C.P.	17,108	8 STD.	34,216
MOBILE PRESS REGISTER	G.B.P.	85,005	10 STD.	212,512
SILVA TIMES JOURNAL	B.C.P.	9,815	8 TAB.	9,815
TRAY HERALD MESSENGER	NO COMIC SECTION	—	—	—
TALLADEGA DAILY HOME	G.B.P.	<u>+ 2,900</u>	8 TAB.	<u>+ 2,900</u>
SUB. TOTAL		153,807		337,401

I.C.P.

BIRMINGHAM NEWS ✓	211,270	12 STD.	633,810
DECATUR DAILY ✓	13,650	8 STD.	27,300
GADSDEN TIMES ✓ 0	21,895	8 STD.	43,790
HUNTSVILLE TIMES ✓	18,704	8 STD.	37,408
MONTGOMERY ADV. ✓	72,948	8 STD.	145,896
TUSCALOOSA NEWS ✓ 0	15,560	8 STD.	31,120
ANDREWS BY THE WAY DISPATCH	3,000	8 TAB.	3,000
SUB TOTAL	357,027		925,324
GRAND TOTAL	510,834		1,262,725

TAB PAPERS 1

100
2-

READY PRINT SURVEY
ARIZONA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u>
DOUGLAS DISPATCH	ACME	3,422	8 TAB.	3,422
PHOENIX REPUBLICAN GAZETTE	ACME	114,096	12 STD.	342,288
TUBSON CITIZEN STAR	ACME	<u>11,079</u>	12 STD. 16 TAB.	<u>165,395</u>
GRAND TOTAL		150,597		411,105

READY PRINT SURVEY
ARKANSAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
EL DORADO NEWS	ACME	9,973	16 TAB.	19,946
FORT SMITH TIMES REC.	THEIR OWN	31,280	8 TAB.	31,280
HELENA WEST HELENA WORLD	-----	-----	-----	-----
HOT SPRINGS SENT. REC.	ACME	13,280	16 TAB.	26,560
LITTLE ROCK ARK. DEM.	THEIR OWN	91,939	8 STD.	183,878
PINE BLUFF COMMERCIAL	G.O.P.	14,801	8 TAB.	14,801
TEXARKANA GAZETTE NEWS	ACME	<u>26,291</u>	8 TAB.	<u>26,291</u>
SUB TOTAL		187,564		302,756
	<u>I.G.P.</u>			
LITTLE ROCK ARK. GAZETTE ✓		<u>105,387</u>	10 STD.	<u>263,467</u>
SUB TOTAL		105,387		263,467
GRAND TOTAL		292,951		566,223

HEADLINE PRINT SURVEY

CALIFORNIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>Circ.</u>	<u>TYPE SECTION</u>	<u>Circ. IN A's</u>
EMERALD HARBOR, HT. TIMES	ACME	12,422	B TAB.	12,422
FREEDOM BEE	ACME	100,157	12 STD.	200,471
LONG BEACH IND. PRESS	ACME	121,410	12 STD.	364,230
LOS ANGELES TIMES	THEIR OWN	787,051	14 STD.	2,795,251
LOS ANGELES EXAMINER	HEARST	671,611	14 STD.	2,790,643
OAKLAND TRIBUNE	THEIR OWN	200,401	16 STD.	810,064
PASADENA INDEPENDENT	ACME	11,501	B TAB.	11,501
PASADENA STAR NEWS	THEIR OWN	35,705	B STD.	71,410
RICHMOND INDEPENDENT	ACME	10,000	B TAB.	10,000
REVERSHIDE ENTERPRISE	ACME	10,177	B STD.	20,354
SACRAMENTO BEE	ACME	111,813	12 STD.	401,557
SACRAMENTO UNION	ACME	47,145	24 TAB.	141,435
SAN BERNARDINO SUN TRIUMPH	ACME	48,006	B STD.	96,172
SAN DIEGO UNION	ACME	140,516	16 STD.	305,144
SAN FRANCISCO CHRONICLE	THEIR OWN	246,568	10 STD.	615,794
SAN FRANCISCO EXAMINER	HEARST	400,000	14 STD.	1,726,800
SAN FRANCISCO VALLEY TIMES		12,044	B STD.	24,088
SAN JOSE MERCURY NEWS	ACME	61,720	12 STD.	246,157
SANTA ANA REGISTER	ACME	14,618	12 STD.	101,005
SANTA BARBARA NEWS PRESS	ACME	21,705	B STD.	43,510
VALLEJO TIMES HERALD	GIBSON PUL.	21,062	B STD.	42,084
MORENO BEE	ACME	10,105	B STD.	60,270
CORONA INDEPENDENT	ACME	2,686	B TAB.	5,372
SAN JOSE PRESS TRIB.	THEIR OWN	28,075	B STD.	90,157
GRAND TOTAL		5,575,822		11,016,568

READY PRINT SURVEY
COLORADO

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCU- LATION</u>	<u>TYPE SECTION</u>	<u>CIRCU- LATION</u>
COLORADO SPRINGS GAZETTE	Acme	24,660	16 Std.	98,640
DENVER POST	THEIR OWN	350,108	12 Std.	1,050,324
ROCKY MT. NEWS	THEIR OWN	155,371	24 Tab.	466,113
DURANGO HERALD NEWS	B.C.P.	3,385	8 Tab.	3,385
FT. COLLINS COLORADOAN	W.C.	7,020	8 Tab.	7,020
GRAND JUNCTION SENTINEL	THEIR OWN	13,378	4 Std.	13,378
PUEBLO CHIEFTAIN STAR JNL.	THEIR OWN	<u>15,382</u>	16 Tab.	<u>70,754</u>
SUB TOTAL		589,304		1,709,624

L.A.E.

COLORADO SPRING FREE PRESS ✓		<u>9,403</u>	8 Std.	<u>18,806</u>
SUB TOTAL		9,403		18,806
GRAND TOTAL		598,707		1,728,430

READY PRINT SURVEY
CONNECTICUT

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION AS</u>
BRIDGEPORT HERALD	C.P.	94,110	16 TAB.	118,220
BRIDGEPORT POST	E.C.P.	61,132	32 TAB.	244,528
HARTFORD COURANT	E.C.P.	130,826	12 STD.	392,478
NEW HAVEN REGISTER	E.C.P.	93,386	12 STD.	280,158
			8 STD.	
WATERBURY AMERICAN REPUBLICAN	E.C.P.	<u>43,857</u>	8 TAB.	<u>131,571</u>
GRAND TOTAL		423,311		1,166,955

READY PRINT SURVEY
DELAWARE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u> <u>AS</u>
WILMINGTON STAR	DISCONTINUED	—	—	—

READY PRINT SURVEY
FLORIDA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
DAYTONA BEACH NEWS JRNL.	THEIR OWN	23,880	8 STD.	47,760
DELAND SUN NEWS	B.C.P.	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENT.	B.C.P.	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	B.C.P.	9,789	8 STD.	19,578
FORT PIERCE NEWS TRIBUNE	B.C.P.	6,411	8 TAB.	6,411
JACKSONVILLE TIMES UNION	THEIR OWN	148,535	12 STD.	445,605
MELBOURNE TIMES	G.B.P.	2,645	6 STD.	3,967
MIAMI NEWS	G.B.P.	97,541	14 STD.	341,358
MIAMI BEACH SUN	E.C.P.	9,325	8 TAB.	9,325
OCLA STAR BANNER	B.C.P.	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	B.C.P.	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	B.C.P.	13,388	8 STD.	26,776
TALLAHASSEE DEL.	S.C.	13,706	8 STD.	27,412
TAMPA TRIBUNE	THEIR OWN	126,666	12 STD.	379,998
WEST PALM BEACH POST TIMES	S.C.	28,798	8 STD.	57,596
ST. AUGUSTINE REC.	G.B.P.	<u>5,622</u>	4 STD.	<u>5,622</u>
SUB TOTAL		536,696		1,460,436
	<u>L.C.P.</u>			
BRADENTON HERALD ✓		10,579	8 STD.	21,158
CLEARWATER SUN ✓		9,914	8 STD.	19,828
ORTHESTEE-SUN		10,695	4 STD.	10,695
LAKELAND LEDGER ✓		15,434	8 STD.	30,868
MIAMI HERALD ✓		255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR ✓		56,977	12 STD.	170,931
PENSACOLA JOURNAL NEWS ✓		46,000	8 STD.	92,000
ST. PETERSBURG TIMES ✓		<u>52,563</u>	12 STD.	<u>178,704</u>
SUB TOTAL		464,944		1,488,321
GRAND TOTAL		1,001,640		2,948,757

READY PRINT SURVEY
GEORGIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALBANY HERALD	S.C.	19,078	8 STD.	38,156
ATLANTA JOURNAL CON.	G.B.P.	480,919	12 STD.	1,442,757
GAINESVILLE TIMES	B.C.P.	5,982	8 TAB.	5,982
ROME NEWS JOURNAL	CUNEO PRESS	<u>11,408</u>	8 TAB.	<u>11,408</u>
SUB TOTAL		517,387		1,498,303

I.C.P.

AUGUSTA CHRONICAL HERALD ✓ 0	61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER ✓ 0	45,526		136,608
MACON TELEGRAPH NEWS ✓ 0	50,850		152,580
SAVANNAH NEWS PRESS ✓	58,685		176,058
WAYCROSS JOURNAL ✓	<u>8,000</u>	8 TAB.	<u>8,000</u>
SUB TOTAL	224,317		718,186
GRAND TOTAL	741,704		2,216,489

READY PRINT SURVEY
I D A H O

<u>PAPER</u>	<u>WHERE PRINTED.</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION IN A's</u>
BOISE STATESMAN	ADME	34,700	8 STD SAT 8 STD SUN	138,800
IDAH0 FALLS POST REGISTER	ADME	15,953	8 STD	31,906
POCATELLO IDAH0 STATE JOURNAL	ADME	10,416	8 STD	20,832
TRIN FALLS TIMES NEWS	B. C.	<u>19,629</u>	8 TAB	<u>19,629</u>
SUB TOTAL		80,698		211,167

I. C. P.

LEWISTON TRIBUNE ✓	I. C. P.	15,000	8 TAB	15,000
SUB TOTAL		<u>15,000</u>		<u>15,000</u>
GRAND TOTAL		95,698		226,167

PUBL.	WHERE PUBL.	READY PRINT SURVEY ILLINOIS		CIRCULATION IN A.M.
		CIRCULATION	TYPE SECTION	
AURORA BEACON NEWS	B. C. P.	29,918	8 TAB	29,918
CHANDLER ILLINOISIAN	W. C.	17,729	8 STD	35,458
CHAMPAIGN URBANA OREGON	W. C.	24,827	8 STD	49,654
CHICAGO HERALD AMER. HEARST	HEARST	753,122	14 STD	2,635,927
CHICAGO DLY NEWS	B. C. P.	572,556	16 TAB	1,145,112
CHICAGO SUN TIMES	B. B. P.	573,327	20 TAB	1,443,317
CHICAGO TRIBUNE	OWN	1,392,384	10 STD	3,480,950
DECATUR HERALD REVIEW	W.C.	53,541	8 STD	107,081
EAST ST. LOUIS JRN.	W.C.	30,086	8 STD	60,172
JOLIET HERALD NEWS	B.C.P.	33,482	8 TAB	33,482
KANKAKEE JOURNAL	B.C.P.	23,311	8 TAB	23,311
SPRINGFIELD SUN JRN.	W.C.	65,138	16 TAB	130,216
SUB TOTAL		3,569,401		9,131,941

I. C. P.

BLOOMINGTON PANTAGRAPH ✓	I. C.	33,215	4 STD	33,215
CHAMPAIGN NEWS GAZETTE ✓	I. C.	29,808	8 STD	59,616
DECATUR COMMERCIAL NEWS ✓	I. C.	34,237	8 STD	68,474
PEORIA JOURNAL STAR ✓	I. C.	85,719	16 STD	358,876
ROCKFORD STAR ✓	I. C.	52,645	8 STD	135,290
SUB TOTAL		249,624		655,471
CORY, POST HERALD 0 100				
GRAND TOTAL		3,819,025		9,787,412

READY PRINT SURVEY
INDIANA

PAPER	WHERE PRINTED	CIRCULATION	TYPE SECT.	CIRCULATION IN 4's
EVANSVILLE COURIER	B.C.P.	89,316	16 STD	357,344
HAMMOND TIMES	B.C.P.	49,143	8 STD.	98,286
HUNTINGTON HERALD PRESS	B.C.P.	8,441	8 TAB	8,441
INDIANAPOLIS STAR	G.B.P.	295,022	12 STD	1,180,088
INDIANAPOLIS TIMES	B.C.P.	98,673	12 STD	296,019
KOKOMO TRIBUNE	B.C.P.	20,522	8 TAB	20,522
MUNCIE STAR	G.B.P.	29,653	14 STD	103,980
SOUTH BEND TRIBUNE	OWN	111,358	16 STD	445,253
FORT WAYNE JOURNAL GAZ.	G.B.P.	<u>890,000</u>	12 STD	<u>270,000</u>
SUB TOTAL		792,328		2,780,358
I. C. P.				
FORT WAYNE NEWS SENTINEL ✓	I. C. P.	90,557	8 STD	181,114
MARION CHRONICLE ✓	I. C. P.	19,989	4 STD	19,989
NEW ALBANY LEDGER ✓	I. C. P.	6,697	8 TAB	6,697
TERRE HAUTE TRIBUNE ✓	I. C. P.	<u>46,700</u>	4 STD	<u>46,700</u>
SUB TOTAL		163,945		254,502
GRAND TOTAL		956,273		3,034,860

READY PRINT SURVEY
IOWA

PAPER	WHERE PRINTED	CIRC.	TYPE SECTION	CIRC. IN A's
COUNCIL BLUFFS NON PARELL	B.C.P.	29,296	16 TAB	58,588
DES MOINES REGISTER TRIBUNE	THEIR OWN	521,152	10 STD.	1,302,380
DUBUQUE TELEGRAPH HERALD	G.B.P.	39,636	6 STD.	59,454
SIOUX CITY JOURNAL	G.B.P.	63,993	10 STD.	159,932
SPENCER TIMES	N.E.A.	6,134	8 TAB.	6,134
WATERLOO COURIER	G.B.P.	<u>48,953</u>	6 STD.	<u>73,429</u>
SUB TOTAL		709,142		1,659,917
	I.C.P.			
CEGAR RAPIDS GAZETTE ✓ ○		59,809	6 STD.	89,713
DAVENPORT DEM. ✓		<u>37,386</u>	8 STD.	<u>76,772</u>
SUB TOTAL		97,195		166,485
GRAND TOTAL		806,677		1,824,402

READY PRINT SURVEY
KANSAS

PAVER	WHERE PRINTED	CIR.	TYPE SECTION	Circ. in U.
ARKANSAS CITY TRAVELER	B. C. P.	6,375	8 TAB.	6,375
ATCHINSON GLOBE	ADME	7,024	8 TAB.	7,024
COFFEYVILLE JOURNAL	ADME	10,112	16 TAB.	10,224
CHEAT DEMO TRIBUNE	THEIR OWN	8,599	4 STD.	8,599
INDEPENDENT REPORTER	ADME	5,816	8 TAB.	5,816
KANSAS CITY KANSAN	W. C.	28,185	8 STD.	56,370
PARSONS SUN	ADME	9,347	8 TAB.	9,347
PITTSBURG HEADLIGHT & SUN		13,500	8 TAB.	13,500
GOODLAND NEWS	G. B. P.	<u>2,700</u>	8 TAB.	<u>2,700</u>
SUB TOTAL		91,658		129,955
	L. G. R.			
HAYS NEWS ✓		6,321	8 TAB.	6,321
HUTCHINSON NEWS HERALD ✓		54,067	8 STD.	108,134
SALINA JOURNAL ✓		24,831	8 STD.	49,662
TOPEKA DAILY CAPITAL ✓ 0		63,446	8 STD.	136,892
WICHITA BEACON ✓		139,279	12 STD.	417,837
WICHITA EAGLE ✓ 0		<u>117,221</u>	8 STD.	<u>234,442</u>
SUB TOTAL		405,167		953,292
GRAND TOTAL		496,825		1,083,247

READY PRINT SURVEY
KENTUCKY

<u>PAPER</u>	WHERE <u>PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u> <u>AS</u>
CORBIN TIMES	B.C.P.	4,341	8 TAB.	4,341
FRANKFORD STATE JOURNAL	B.C.P.	5,667	8 TAB.	5,667
HARLAN ENTERPRISE	B.C.P.	5,793	8 TAB.	5,793
HENDERSON GLEANER JOURNAL	B.B.P.	6,574	8 TAB.	6,574
LOUISVILLE COURIER TIMES	G.B.P.	308,325	8 STD.	616,650
OWENSBORO MESSENGER	THEIR OWN	<u>—</u>	<u>—</u>	<u>—</u>
SUB TOTAL		330,700		639,025

L.C.P.CO.

ASHLAND INDEPENDENT ✓	16,995	16 TAB.	33,990
BOWLING GREEN PARK CITY NEWS ✓	10,281	8 TAB.	10,281
DANVILLE ADVOCATE ✓	3,675	8 TAB.	3,675
LEXINGTON HERALD LEADER ✓	52,664	8 STD.	105,328
PADUOH SUN DEMOCRAT ✓	<u>28,432</u>	8 TAB.	<u>28,432</u>
SUB TOTAL	112,054		181,713

GRAND TOTAL	442,754		819,738
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READY PRINT SURVEY
LOUISIANA

PAPER	WHERE PRINTED	CIRC.	TYPE SECTION	Circ. UL. 6/8
BATON ROUGE ADVOCATE	V.C.	43,352	12 STD.	130,059
BODALUSA NEWS	B.B.P.	5,399	8 TAB.	5,399
NEW ORLEANS T. PICTORIAL	THEIR OWN	276,665	12 STD.	828,795
NEW ORLEANS STATES	THEIR OWN	88,813	8 STD.	176,606
OPELOUSAS WORLD	HOME	<u>8,573</u>	8 TAB.	<u>8,573</u>
SUB TOTAL		422,793		1,032,632

L.S.E.

LAKE CHARLES AMERICAN PRESS ✓ O	22,699	8 STD.	45,398
MONROE WORLD ✓ O	32,025	8 STD.	64,050
NEW ORLEANS TRIBUNE	<u>107,691</u>	8 STD.	<u>215,382</u>
SHREVEPORT TIMES ✓	<u>95,190</u>	12 STD.	<u>285,570</u>
SUB TOTAL	257,605		510,400
GRAND TOTAL	679,998		1,542,932

READY PRINT SURVEY
MAINE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION</u>
BANGOR NEWS	E.C.P.	<u>73,399</u>	B STD.	<u>147,198</u>
SUB TOTAL		73,399		147,198
	<u>L.C.P.CO.</u>			
PORTLAND SUN TELEGRAM ✓		<u>103,000</u>	12 STD.	<u>309,000</u>
SUB TOTAL		103,000		309,000
GRAND TOTAL		176,399		456,198

READY PRINT SURVEY
MARYLAND

NAME	WHERE PRINTED	CIRCULATION	TYPE SECTION	CIRCULATION 6
BALTIMORE AMERICAN	THEIR OWN	321,469	14 STD.	1,445,941
BALTIMORE SUN	G.B.P.	<u>308,362</u>	8 STD. 12 TAB.	<u>1,072,391</u>
SUB TOTAL		630,038		2,523,132
	<u>J.C.P.CO.</u>			
CUMBERLAND SUN TIMES ✓ C		<u>29,516</u>	12 STD.	<u>88,548</u>
SUB TOTAL		29,516		88,548
GRAND TOTAL		659,554		2,613,680

READY PRINT SURVEY
MASSACHUSETTS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION A^o</u>
BOSTON GLOBE	G.B.P.	365,730	10 STD.	914,325
BOSTON HERALD TRAVELER	E.C.P.	248,071	8 STD.	496,142
BOSTON POST	G.B.P.	230,930	10 STD.	567,315
BOSTON SUN ADVERTISER	HEARST	547,691	12 STD.	1,643,073
LOWELL SUN	E.C.P.	27,569	8 STD.	55,138
SPRINGFIELD SUN REPUBLICAN	THEIR OWN	106,753	12 STD.	320,259
BOROUGHSTON TELEGRAM	E.C.P.	106,300	12 STD.	312,000
SUB TOTAL		1,630,754		4,308,252
	<u>L.C.P.CO.</u>			
LYNN TELEGRAM NEWS ✓		22,436	4 STD.	22,436
NEW BEDFORD STANDARD TIMES ✓		30,824	8 STD.	101,648
SUB TOTAL		73,260		124,084
GRAND TOTAL		1,704,004		4,432,336

READY PRINT SURVEY
MICHIGAN

<u>PAPER</u>	<u>PHONE</u> <u>TRIN. NO.</u>	<u>CIRCULATION</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRCULATION</u> <u>A³</u>
DETROIT FREE PRESS	G.B.P.	508,000	12 STD. 4	1,524,000
DETROIT NEWS	U.B.P.	574,000	12 STD.	1,722,000
DETROIT TIMES	HEATSBY	<u>528,000</u>	12 STD.	<u>1,584,000</u>
SUB TOTAL		1,610,000		4,830,000

I.C.P. CO.

GRAND RAPIDS HERALD ✓		<u>79,000</u>	16 STD.	<u>316,000</u>
SUB TOTAL		79,000		316,000
GRAND TOTAL		1,689,000		5,146,000

READY PRINT SURVEY

MINNESOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCS.</u>	<u>TYPE SECTION</u>	<u>CIRCS. IN 4'S</u>
ALBERT LEA TRIBUNE	THEIR OWN	9,356	4 STD.	9,356
DULUTH NEWS TRIBUNE	G.B.P.	71,059	10 STD.	177,647
MINNEAPOLIS STAR TRIBUNE	THEIR OWN	621,702	12 STD.	1,865,776
ST. PAUL PIONEER PRESS	G.B.P.	<u>177,183</u>	10 STD.	<u>471,257</u>
 SUB TOTAL.		 875,300		 2,485,636
 GRAND TOTAL.		 875,300		 2,485,636

HEAVY MINE SURVEY
LABORERS

NAME	TIME STARTED	TIME STOPPED	TYPE SCHEDULE	TIME IN A.M.
JOHN E. HENRY	8:15	9:25	8 hrs.	9,25
JOHN E. HENRY	10:00	11:25	8 hrs.	11,25
JOHN E. HENRY	12:00	1:25	8 hrs.	1,25
TOTAL		21,25		21,25

LABORERS

JOHN E. HENRY ✓	11,25	8 hrs.	11,25
NATHAN ✓	9,25	8 hrs.	9,25
JOHN E. HENRY ✓	11,25	8 hrs.	11,25
JOHN E. HENRY ✓	11,25	8 hrs.	11,25
JOHN E. HENRY ✓	11,25	8 hrs.	11,25
JOHN E. HENRY ✓	11,25	8 hrs.	11,25
TOTAL	65,25		65,25
TOTAL	106,50		106,50

DEATH PRINT SURVEY

MISSOURI

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4'S</u>
INDEPENDENCE NEWS	Township	865	8 5th.	1,730
JEFFERSON CITY POST TRIBUNE	Township	17,505	4 5th.	17,505
KANSAS CITY STAR	C.B. 1.	561,507	12 5th.	1,084,507
ST. LOUIS GLOBE DEM.	C.B. 1.	754,754	12 5th.	1,509,508
ST. LOUIS POST DISPATCH	Township	477,618	12 5th.	1,420,858
SPRINGFIELD NEWS LEADER	W. C.	57,107	8 5th.	114,214
SUB TOTAL		1,261,154		2,620,274
W. C. P.				
JOHN G. GLOVE ✓		14,815	8 5th.	29,630
ST. JOSEPH EVEN PRESS ✓		50,212	8 5th.	100,424
		65,027		130,054
GRAND TOTAL		1,326,181		2,850,328

DEADY PRINT SURVEY
MONTANA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
BILLINGS GAZETTE	THEIR OWN	35,332	10 STD.	88,330
BOZEMAN CHRONICLE	G.B.P.	4,777	8 TAB.	4,777
BUTTE STANDARD POST	ACME	25,079	8 STD.	50,158
GREAT FALLS TRIBUNE	THEIR OWN	36,200	8 TAB.	36,200
HELENA INDEPENDENT	ACME	7,856	8 STD.	15,712
KALISPELL INTER LAKE	NEA	6,079	8 TAB.	6,079
LEWISTOWN NEWS	B.C.P.	5,000	8 TAB.	5,000
MILES CITY STAR	B.C.P.	4,582	8 TAB.	4,582
MISSOULA SENTINEL	THEIR OWN	<u>16,495</u>	8 STD.	<u>22,990</u>
SUB TOTAL		141,400		243,828
GRAND TOTAL		141,400		243,828

READY PRINT SURVEY
NEBRASKA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. 1948</u>
BEATRICE SUN	W.C.	9,981	8 TAB.	9,981
GRAND ISLAND INDEPENDENT	W.C.	18,741	8 TAB.	18,741
LINCOLN JOURNAL STAR	THEIR OWN	49,293	12 STD.	147,879
OMAHA WORLD HERALD	THEIR OWN	<u>361,266</u>	12 STD.	<u>783,738</u>
SUB TOTAL		399,281		960,339
GRAND TOTAL		399,281		960,339

READY PRINT SURVEY
NEVADA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELY TIMES	ACME	2,225	8 TAB.	2,225
LAS VEGAS REVIEW JRN.	ACME	19,232	12 STD.	57,697
LAS VEGAS SUN	ACME	11,348	16 TAB.	22,696
RENO STATE JOURNAL	ACME	<u>18,110</u>	8 STD.	<u>36,620</u>
SUB TOTAL		51,095		115,238
GRAND TOTAL		51,095		115,238

FEATY PRINT SURVEY

NEW HAMPSHIRE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4'S</u>
MANCHESTER SUN	E.C.P.	34,617	8 STD.	69,234
		<hr/>		<hr/>
SUB TOTAL		34,617		69,234
		<hr/>		<hr/>
GRAND TOTAL		34,617		69,234

BLANK POINT SURVEY

NEW JERSEY

CACHE	Where Found	Count	Type Section	Cont. in lbs
Academy Park Press	E.O.P.	26,000	8 STD.	52,000
Atlantic City Press	E.O.P.	26,867	16 Tan	53,734
Newark Times	E.O.P.	282,322	10 STD.	725,805
New Brunswick Home News	E.O.P.	24,215	16 Tan	56,470
Passaic Sun Eagle		6,400	8 Tan	6,400
Paterson Sun Eagle		15,000	8 Tan	15,000
SUB TOTAL		791,604		905,500
	E.O.P.			
Newark Star Tribune ✓		277,328	12 STD.	691,024
Thompson Press		64,964	8 STD.	164,964
SUB TOTAL		361,092		1,025,500
GRAND TOTAL		755,773		1,930,000

REASSIGNMENT SURVEY
NEW EXHIBIT

<u>PAPER</u>	<u>TYPE</u> <u>PRINTED</u>	<u>DATE</u>	<u>TYPE</u> <u>REASSIGNED</u>	<u>CIRCUIT</u> <u>AN. A. A.</u>
ALBUQUERQUE JOURNAL	Color	46,371	12 wtd.	139,117
CARLEBAD CURRENT AFFAIRS	H.C.P.	8,625	8 TAN.	8,625
CLAYTON NEWS JOURNAL	Color	7,619	16 TAN.	16, 238
FARMINGTON TIMES	Color	3,826	8 TAN.	3,826
GALLUP INDEPENDENT	H.C.	3,477	8 TAN.	3,477
HOBBS NEWS & SUN	Color	7,750	8 TAN.	7,750
PORTALES NEWS	Color	3,077	8 TAN.	3,077
ROSEMILL RECORD	H.C.P.	7,766	8 TAN.	7,766
SANTA FE NEW MEXICAN	Color	11,465	8 TAN.	11,465
SUB TOTAL		102,378		207,197

Los Alamos

LOS ALAMOS SUN NEWS ✓		3,707	8 TAN.	3,707
SILVER CITY PRESS ✓		2,600	8 TAN.	2,600
SUB TOTAL		7,307		7,307
GRAND TOTAL		109,685		214,504

HEAVY PAPER SHOEY NEW YORK

NAME	WHERE ENTERED	Q. 1880	TYPE SUBSTANCE	Q. 1880
ALBANY TIMES UNION	HEAVY	110,000	10. 5th.	340,190
BUFFALO MORNING EXPRESS	Q. 18. P.	275,000	10. 5th.	1,007,600
ELMHURST SUN TELEGRAPH	THEIR OWN	60,440	10. 5th.	140,200
BROOKLYN EAGLE	THEIR OWN	104,000	10. 1st.	320,400
NEW YORK HERALD TRIBUNE	Q. 18. P.	900,000	0. 5th.	790,000
NEW YORK JOURNAL AMERICAN	HEAVY	000,000	10. 5th.	2,011,000
LA TRIBUNA	ENTIRELY THEIR OWN	10,000	0. 1st.	12,000
NEW YORK SUN NEWS	THEIR OWN	2,000,000	10. 1st.	2,000,000
NEW YORK POST	Q. 18. P.	277,000	10. 1st.	1,10,700
POUGHKEEPSIE FREE PRESS	Q. 18. P.	30,000	10. 1st.	40,000
ROCHESTER DEM. & CROCODILE	Q. 18. P.	120,000	10. 5th.	220,000
SYRACUSE JOURNAL AMERICAN	Q. 18. P.	200,000	10. 5th.	000,000
SYRACUSE POST STANDARD	Q. 18. P.	100,000	10. 5th.	300,000
UTICA OBSERVER	Q. 18. P.	100,000	10. 5th.	100,000
SUB TOTAL		6,250,000		10,100,000

1000

BIRMINGHAM PRESS ✓ 0	01,000	10. 5th.	200,000
JAMAICA LODGE ISLAND PRESS ✓ 0	200,000	10. 5th.	000,000
NEW YORK HERALD ✓ 0	1,000,000	10. 1st.	1,100,000
GARDEN CITY NEWS DAY - -	220,000	0. 1st.	220,000
SUB TOTAL	1,200,000		1,200,000
GRAND TOTAL	7,450,000		12,300,000

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HEAVY TRUCK SURVEY

1941-1942

NAME	ADDRESS	DATE	TYPE	AMOUNT
DUNEDIN TOWN NEWS	5.11.12	15,100	8 min.	2,250
CHARLOTTE NEWS	11.11.12	69,014	8 min.	69,014
CONCORD TRIBUNE	11.11.12	8,585	8 min.	8,585
FAYETTEVILLE OBSERVER	11.11.12	23,123	8 min.	45,000
GAZETTE GAZETTE	11.11.12	19,147	8 min.	38,000
GREENSBORO NEWS	11.11.12	28,000	12 min.	35,000
HIGH POINT TRIBUNE	11.11.12	21,222	8 min.	42,000
RAPOHE RAPID TRIBUNE	11.11.12	2,000	8 min.	4,000
ROCKY MOUNTAIN	11.11.12	13,544	8 min.	27,000
SALISBURY NEWS	11.11.12	17,000	8 min.	34,000
SUB TOTAL		271,000		242,000

J. J. J.

ASHVILLE OBSERVER NEWS	✓	52,000	8 min.	104,000
CHARLOTTE OBSERVER	✓	145,100	12 min.	435,000
DURHAM TRIBUNE	✓	28,000	8 min.	56,000
ELIZABETH CITY OBSERVER	✓	7,000	8 min.	14,000
FEDERSON DISPATCH	✓	4,000	8 min.	8,000
KANNAPPA TIMEPAPER	✓	10,000	8 min.	20,000
RALEIGH NEWS & OBSERVER	✓	12,000	10 min.	24,000
RALEIGH NEWS	✓	15,000	8 min.	30,000
SALISBURY NEWS	✓	23,000	8 min.	46,000
SENECA CITY	✓	5,000	8 min.	10,000
SUNTON GAZETTE	✓	10,000	12 min.	20,000
SUB TOTAL		302,000		1,000,000
GRAND TOTAL		573,000		1,242,000

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READY PRINT SURVEY

NORTH DAKOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
FARGO FORUM	G.B.P.	50,845	10 STD.	122,112
SUB TOTAL		<hr/> 50,845		<hr/> 122,112
	I.C.P.			
GRAND FORKS HERALD ✓		34,250	8 STD.	68,500
SUB TOTAL		<hr/> 34,250		<hr/> 68,500
GRAND TOTAL		<hr/> 85,095		<hr/> 190,612

READY PRINT SURVEY
OHIO

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
CAMBRIDGE JEFFERSONISON	G.B.P.	13,825	8 TAB.	13,825
CINCINNATI ENQU.	G.D.P. DUNKIRK	282,550	12 STD.	647,650
CLEVELAND PLAIN DEALER	G.D.P.	513,207	12 STD.	1,539,621
COLUMBUS CITIZEN	B.C.P.	104,943	12 STD.	314,829
COLUMBUS DISPATCH	G.B.P.	230,366	12 STD.	691,098
COLUMBUS STAR	G.B.P.	75,000	12 TAB.	112,000
CORNOCKTON TRIBUNE	THEIR OWN	10,305	4 STD.	10,305
ELYRIA CHRONICLE	B.C.P.	19,415	8 TAB.	19,415
LORAIN JOURNAL T. HERALD	G.B.P.	22,644	8 TAB.	22,644
MANFIELD NEWS & JRNL.	G.B.P.	31,872	8 TAB.	31,872
TOLEDO BLADE TIMES	G.B.P.	166,660	14 STD.	583,310
YOUNGSTOWN VINDICATOR	G.B.P.	139,230	12 STD.	417,660
ZANESVILLE TIMES SIGNAL	B.C.P.	20,636	8 STD.	41,272
DAYTON JOURNAL HERALD	G.B.P.	<u>97,750</u>	8 STD.	<u>195,500</u>
SUB TOTAL		1,728,403		4,841,001
	<u>I.C.P.</u>			
ANDON BEACON JOURNAL ✓		159,201	16 STD.	636,804
ATHENA MESSENGER ✓		19,194	8 STD.	38,388
CANTON REPOSITORY ✓		70,645	8 STD.	141,290
DAYTON NEWS ✓		168,128	12 STD.	504,384
IRONTON TRIBUNE ✓		9,437	8 STD.	18,874
LIMA NEWS ✓		35,977	8 STD.	71,954
MIDDLETOWN NEWS JOURNAL ✓		19,037	4 STD.	19,037
SPRINGFIELD NEWS SUN ✓		<u>38,182</u>	8 STD.	<u>76,364</u>
SUB TOTAL		519,801		1,505,995
GRAND TOTAL		2,248,204		6,347,996

READY PRINT SURVEY
OKLAHOMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ADA NEWS	B.C.P.	9,093	8 TAB.	9,093
BARTTREVILLE EXAMINER	SOUTHWESTERN PRESS	9,492	8 TAB.	9,492
CHICKASHA EXPRESS	B.C.P.	6,135	8 TAB.	6,135
CLINTON NEWS	ACME	4,967	8 TAB.	4,967
CUSHING CITIZEN	ACME	4,398	8 TAB.	4,398
DUNCAN BANNER	ACME	9,431	16 TAB.	18,862
DURANT DEM.	ACME	6,653	8 TAB.	6,653
ELK CITY NEWS	ACME	4,888	8 TAB.	4,888
ENID NEWS	THEIR OWN	19,900	4 UTD.	19,900
GUTHRIE LEADER	ACME	5,176	8 TAB.	5,176
GUYMON HERALD	ACME	3,346	8 TAB.	3,346
HENREVETTA FREE LANCE	THEIR OWN	3,998	8 TAB.	3,998
HOBART DEM. CHIEF				
LAWTON CONSTITUTION PRESS	ACME	16,586	16 TAB.	33,136
MUSKOGEE TIMES DEM.	THEIR OWN	15,255	16 TAB.	30,510
NORMAN TRANSCRIPT	B.C.P.	6,363	8 TAB.	6,363
OKLAHOMA CITY OKLAHOMAN	THEIR OWN	264,993	12 STD.	793,779
OKMULGEE TIMES	FORT SMITH	6,997	8 TAB.	6,997
PONCA CITY NEWS	B.C.P.	11,213	8 TAB.	11,213
SAYRE HEADLIGHT JRNL.	ACME	2,884	8 TAB.	2,884
SEMINOLE PRODUCER	ACME	5,051	8 TAB.	5,051
SHAWNEE STAR	W.C.	11,664	8 TAB.	11,664
STILLWATER NEWS PRESS	THEIR OWN	<u>7,387</u>	8 UTD.	<u>14,774</u>
SUB TOTAL		435,470		1,013,279
	<u>B.C.P.</u>			
TULSA WORLD VO		<u>145,258</u>	16 STD.	<u>581,032</u>
SUB TOTAL		145,258		581,032
GRAND TOTAL		580,728		1,594,311

READY PRINT SURVEY

OREGON

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
EUGENE REGISTER GUARD		31,618	8 TAB.	31,618
OREGON CITY ENTERPRISE	U.F.	8,411	8 TAB	8,411
PORTLAND OREGONIAN	THEIR OWN	224,216	16 STD.	1,176,864
PORTLAND JOURNAL	THEIR OWN	214,380	16 STD.	857,520
SALEM OREGON STATESMAN	ACME	17,564	8 TAB	17,564
THE DALLAS CHRONICLE	ACME	4,414	8 TAB	4,414
 SUB TOTAL		<u>570,203</u>		<u>2,096,391</u>
 GRAND TOTAL		<u>570,203</u>		<u>2,091,391</u>

READY PRINT SURVEY
PENNA.

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>Circ. in C.</u>
ALLENTOWN CALL CHRONICLE	G.B.P.	65,097	12 STD.	195,291
ERIE DISPATCH	G.B.P.	44,905	12 STD.	134,715
ERIE TIMES	G.B.P.	40,169	12 STD.	120,507
LANGASTER SUN NEWS	G.B.P.	67,599	14 STD.	236,835
PHILADELPHIA BULLETIN	THEIR OWN	699,777	24 STD.	4,198,662
PHILADELPHIA INQUIRER	THEIR OWN	1,146,321	16 STD.	4,575,284
PITTSBURG PRESS	THEIR OWN	472,103	16 STD.	1,888,412
UNIONTOWN EVENING STANDARD	G.B.P.	19,000	8 TAB.	19,000
UNIONTOWN MORNING HERALD	G.B.P.	<u>11,000</u>	8 TAB.	<u>11,000</u>
SUB TOTAL		2,965,953		11,379,447

L.C.P.

HARRISBURG PATRIOT NEWS ✓ O	114,583	12 STD.	343,749
PITTSBURGH SUN TELEGRAPH ✓ —	453,000	20 TAB.	1,132,500
READING EAGLE ✓ O	59,000	8 STD.	472,000
SCRANTON SCRANTONIAN ✓	48,531	8 STD.	97,062
WILKES BARRE INDEPENDENT ✓	46,840	4 STD.	46,840
PHILADELPHIA MAYFAIR TIMES ✓ Mc KESSPENT Daily ✓ A-113 ✓	<u>17,000</u>	8 STD.	<u>16,000</u>
SUB TOTAL	738,854		2,126,151
GRAND TOTAL	3,304,807		13,505,598

READY PRINT SURVEY
BYDIE ISLAND

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
PROVIDENCE JOURNAL	E.P.C.	179,065	10 STD.	447,562
SUB TOTAL		179,065		447,562
GRAND TOTAL		179,065		447,562

READY PRINT SURVEY
SOUTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>Circ. Jul 4, 1916</u>
FLORENCE NEWS	S.C.	14,140	8 STD.	25,200
SUB TOTAL		14,140		25,200

L.C.S.

ANDERSON INDEPEND MAIL ✓		42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER ✓		60,533	8 STD.	121,066
COLUMBIA STATE ✓		83,108	12 STD.	249,324
GREENVILLE NEWS ✓		78,845	12 STD.	236,535
GRANDEBOURNE TIMES & DEM. ✓		5,796	8 STD.	11,592
SPARTANBURG HERALD JOURNAL ✓ O		37,903	8 STD.	75,806
CHARLESTON EVENING POST ✓		<u>31,500</u>	4 STD.	<u>31,500</u>
SUB TOTAL		339,852		847,137
GRAND TOTAL		354,002		847,417

READY PRINT SURVEY
SOUTH DAKOTA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
HURON HURONITE PLATSMAN	G.C.P.	11,610	8 STD.	23,220
SIOUX FALLS ARBUS LEADER	G.C.P.	<u>51,053</u>	10 STD.	<u>127,362</u>
SUB TOTAL		62,663		150,582
	<u>I.C.P.</u>			
ABERDEEN AMERICAN NEWS ✓		20,201	8 STD.	40,400
RAPID CITY JOURNAL ✓ D		24,319	8 STD.	48,638
WATERTOWN PUBLIC OPINION ✓		<u>12,268</u>	8 TAB.	<u>12,268</u>
SUB TOTAL		56,768		101,286
GRAND TOTAL		119,431		251,268

READY PRINT SURVEY
TENNESSEE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELIZABETHAN STAR	D.C.P.	5,802	8 TAB.	5,802
JOHNSON CITY PRESS	S.C.	19,307	8 STD.	38,614
KNOXVILLE SENTINEL	D.C.P.	108,872	12 STD.	326,616
MEMPHIS COMMERCIAL APPEAL	THEIR OWN	251,361	12 STD.	754,083
MORRISTOWN GAZETTE MAIL	G.D.P.	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	G.D.P.	<u>191,360</u>	10 STD.	<u>478,390</u>
SUB TOTAL		581,343		1,608,126
	<u>L.C.P.</u>			
BRISTOL HERALD ✓ 0		23,879	8 STD.	47,798
CHATTANOOGA TIMES ✓ 0		88,764	12 STD.	266,292
JACKSON SUN ✓ 0		15,130	8 STD.	30,260
KINGSPORT TIMES ✓ 0		20,561	12 STD.	61,683
KNOXVILLE JOURNAL ✓		88,456	12 STD.	265,368
GREENVILLE DAILY SUN ✓		<u>12,000</u>	4 STD.	<u>12,000</u>
SUB TOTAL		348,790		683,401
GRAND TOTAL		930,133		2,291,527

READY PRINT SURVEY
T. 245

PAPER	WHERE COLLECTED	CIRC.	TYPE SECTION	CIRC. IN 1919
ALICE ECHO	ACME	5,491	8 TAB.	5,491
AMARILLO NEWS GLOBE	ACME	58,649	12 STD.	176,047
BEAUMONT ENTERPRISE	THEIR OWN	71,394	16 STD.	285,776
BONHAM FAVORITE	ACME	4,577	8 TAB.	4,577
BROWNSHERO HERALD	G.C.P.	10,369	8 STD.	20,738
BRECKENRIDGE AMERICAN				
BRENNAN DANNER	ACME	5,578	8 TAB.	5,578
BROOKVILLE HERALD	ACME	13,000	16 TAB.	26,000
BROWNWOOD BULLETIN	ACME	9,040	8 TAB.	9,040
BRYAN EAGLE	NEA-CLEVELAND	6,900	8 TAB.	6,900
DALLAS NEWS	G.C.P.	197,563	12 STD.	592,689
DALLAS TIMES HERALD	FORT WORTH	164,564	16 STD.	658,256
DEL RIO NEWS HERALD	ACME	4,045	8 TAB.	4,045
EL PASO TIMES	ACME	67,836	16 STD.	271,544
FORT WORTH STAR TELEGRAM	THEIR OWN	225,325	16 STD.	901,300
GAINESVILLE REGISTER	ACME	5,300	8 TAB.	5,300
GALVESTON TRIBUNE	THEIR OWN	23,027	12 STD.	69,051
GLADEWATER MIRROR	THEIR OWN	4,534	8 TAB.	4,534
GONZALES INQUIRER	ACME	2,654	8 TAB.	2,654
GREENVILLE HERALD	NEA-CLEVELAND	8,279	8 TAB.	8,279
HARLINGTON MORNING STAR	ACME	13,000	16 TAB.	26,000
HENDERSON NEWS	ACME	6,069	8 TAB.	6,069
HILLSBORO MIRROR	G.C.P.	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	G.C.P.	219,427	12 STD.	658,281
JACKSONVILLE PROGRESS	ACME	4,689	8 TAB.	4,689
KENNYVILLE TIMES	ACME	3,443	8 TAB.	3,443
LAMBA REPORTER	ACME	4,020	8 TAB.	4,020

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
LAREDO TIMES	THEIR CO.	15,191	28 TAB.	53,168
LONGVIEW JOURNAL NEWS	ACME	18,784	16 TAB.	37,568
LUBBOCK AVALANCHE	ACME	44,420	12 STD.	133,260
LUFKIN NEWS	ACME	6,933	8 TAB.	6,933
MCKALEN EVENING MONITOR	ACME	11,000	16 TAB.	22,000
NEXIA NEWS	W.C.	2,836	8 TAB.	2,836
MIDLAND REPORTER TELEGRAM	ACME	12,642	8 STD.	25,284
ODESSA AMERICAN	ACME	22,237	16 TAB.	44,474
PALESTINE HERALD	ACME	7,490	8 TAB.	7,490
PAMPA NEWS	ACME	7,216	16 TAB.	14,432
PAMPA SPOKESMAN	D.C.P.	5,739	16 TAB.	11,478
PLAINVIEW HERALD	ACME	6,901	16 TAB.	13,802
SAN ANTONIO EXPRESS	G.D.P.	113,055	14 STD.	395,937
SHERMAN DEM.	ACME	13,136	16 TAB.	26,272
SULPHUR SPRINGS NEWS	ACME	3,206	8 TAB.	3,206
SWEETWATER REPORTER	ACME	6,234	8 TAB.	6,234
TAYLOR PRESS	ACME	6,385	8 TAB.	6,385
TEMPLE TELEGRAM	ACME	17,549	16 TAB.	35,098
TEXARKANA GAZETTE	ACME	26,291	16 TAB.	52,582
VERNON RECORD	ACME	5,823	8 TAB.	5,823
VICTORIA ADVOCATE	ACME	10,577	8 TAB.	10,577
WAXACHIE LIGHT	ACME	<u>6,000</u>	8 TAB.	<u>6,000</u>
SUB TOTAL		1,513,057		4,685,169

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>L.C.P.</u>				
ABILENE REPORTER NEWS ✓ 0		35,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN ✓ 0		49,731	12 STD.	149,193
BIG SPRING HERALD ✓ 0		8,600	8 STD.	17,200
COMPTON CHRISTI CALLER TIMES ✓ 0		67,007	8 STD.-4 STD.	201,000
DENISON HERALD ✓		10,414	8 STD.	20,828
DENTON REC. CHRONICLE ✓		8,465	8 STD.	16,930
GREENVILLE BANNER ✓		8,021	8 STD.	16,042
HOUSTON POST ✓ 0		225,000	12 STD.	675,000
KILGORE HERALD ✓		6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER ✓		11,756	8 STD.	23,512
MOUNT PLEASANT TIMES ✓		3,000	8 TAB.	3,000
ORANGE LEADER ✓		6,379	8 STD.	12,758
PARIS NEWS ✓		12,500	8 STD.	25,000
PORT ARTHUR NEWS ✓ 0		23,383	12 STD.	73,149
SAN ANGELO STANDARD TIMES ✓ 0		35,323	8 STD.	70,646
SNYDER NEWS TEXAS ✓ 0		6,233	8 STD.	12,466
TEXAS CITY SUN ✓		5,051	8 STD.	10,052
TYLER COURIER TIMES ✓		22,743	8 STD.	45,486
WACO TRIBUNE ✓ 0		48,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES ✓ 0		52,000	8 STD.	104,000
WHELFORD TEXAS BRAND ✓		2,750	8 STD.	5,500
SAN ANTONIO LIGHT — —		<u>141,000</u>	8 TAB.	<u>141,000</u>
SUB TOTAL.		665,455		1,846,634
GRAND TOTAL		2,178,550		6,531,803

READY PRINT SURVEY

UTAH

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN L's</u>
ODEN STANDARD EXAMINER	ADME	26,919	8 STD.	53,838
PROVO HERALD	ADME	12,483	8 STD.	24,966
SALT LAKE CITY TRIBUNE	THEIR OWN	134,786	12 STD.	534,358
 SUB TOTAL		<hr/> 214,188		<hr/> 613,162
 GRAND TOTAL		<hr/> 214,188		<hr/> 613,162

READY PRINT SURVEY
VERMONT

<u>PAPER</u>	<u>THIRD</u> <u>COVERED</u>	<u>CIRCULATION</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRCULATION</u> <u>AD</u>
BURLINGTON FREE	C.B.P.	12,842	B TAB.	12,842
SUB TOTAL		12,842		12,842
GRAND TOTAL		12,842		12,842

READY PRINT SURVEY
VIRGINIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
PETERSBURG PROGRESS INDEX	S.C.P.	16,594	8 STD.	33,388
PULASKI SOUTHWEST TIMES	B.C.P.	4,853	8 TAB.	4,853
SUFFALK NEWS HERALD	B.C.P.	6,899	8 TAB.	6,899
NEWPORT NEWS PRESS	THEIR OWN	<u>43,600</u>	8 STD.	<u>87,200</u>
SUB TOTAL		72,056		132,350

L.C.P.

DANVILLE REGISTER ✓		18,534	8 STD.	37,168
LYNCHBURG NEWS ✓		22,730	8 STD.	45,460
MARTINSVILLE BULLETIN ✓ 0		8,393	8 STD.	16,786
NORFOLK VA. PILOT ✓ 0		140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH ✓		176,679	16 STD.	706,716
ROANOKE TIMES ✓		80,195	10 STD.	225,487
FARMVILLE HERALD ✓		4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH		16,000	4 STD.	16,000
SUB TOTAL		<u>466,771</u>		<u>1,471,797</u>
GRAND TOTAL		538,827		1,604,147

READY PRINT SURVEY
WASHINGTON

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRCULATION AS</u>
BELLINGHAM HERALD	THEIR OWN	20,376	4 STD.	20,376
OLYMPIA OLYMPIAN	THEIR OWN	10,682	8 TAB.	10,682
SEATTLE POST INTELLIGENCE	HEARST	263,831	14 STD.	923,408
SEATTLE TIMES	THEIR OWN	237,502	16 STD.	950,008
SPOKANE SPOKESMAN	THEIR OWN	141,548	12 STD.	424,644
WALLA WALLA UNION BULLETIN	THEIR OWN	16,004	8 TAB.	16,004
YAKIMA HERALD	THEIR OWN	31,405	4 STD.	31,405
WENATCHEE WORLD	G.B.P.	<u>18,200</u>	8 TAB.	<u>18,200</u>
SUB TOTAL		739,548		2,394,727

I.C.P.CO.

TACOMA NEWS TRIBUNE ✓ O		70,626	16 STD.	282,504
WENATCHEE WORLD ✓		16,698	4 STD.	16,698
PASCO TRI-CITY HERALD ✓		<u>17,000</u>	8 TAB.	<u>17,000</u>
SUB TOTAL		104,324		316,200
GRAND TOTAL		843,872		2,710,927

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READY PRINT SURVEY
WASHINGTON DC.

<u>PAPER</u>	<u>WHERE PRTD.</u>	<u>CIRCULATION</u>	<u>TYPE SECTION</u>	<u>CIRC. IN A's</u>
WASHINGTON STAR	G.B.P.	27,244	10 STD	683,110
SUB TOTAL		<u>27,244</u>		<u>683,110</u>

I. C. P.

WASHINGTON POST & T. H. ✓	I.C.P.	422,000		2,115,000
GRAND TOTAL		<u>696,244</u>	20 STD-	<u>2,798,110</u>

READY PRINT SURVEY
W. VA.

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN A's</u>
BECKLEY POST REGISTER ✓	I.C.P.	30,828	16 TAB.	61,696
BLUEFIELD TELEGRAPH & SUNSET NEWS ✓		35,759	12 STD.	107,877
CHARLESTON GAZETTE ✓		88,280	8 STD.	176,560
CHARLESTON MAIL ✓ 0		60,864	8 STD.	121,728
CLARKSBURG EXPONENT ✓ 0		39,355	42 8 STD.	118,065
FAIRMONT TIMES ✓ 0		17,773	8 STD.	35,546
HUNTINGTON HERALD ADVERTISER ✓ 0		50,358	8 STD.	100,716
PARKERSBURG NEWS SENTINEL ✓ 0		22,653	8 STD.	45,314
WHEELING NEWS REGISTER ✓ 0		<u>50,500</u>	12 STD.	<u>151,500</u>
GRANT TOTAL		401,370		873,648

READY PRINT SURVEY
WISCONSIN

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRCULATION</u>	<u>TYPE SERIALS</u>	<u>CIRCULATION C. IN A's</u>
LA CROSSE JOURNAL	G.B.P.	32,546	6 STD	48,819
RAVINE BULLETIN	G.B.P.	29,000	6 STD	44,000
MILWAUKEE JOURNAL	OWN	471,883	12 STD	1,415,649
MILWAUKEE SENTINEL	HEARST	<u>227,920</u>	14 STD	<u>797,728</u>
SUB TOTAL		761,359		2,306,223
	I. C. P.			
MADISON STATE JOURNAL/O	I. C. P.	<u>81,000</u>	8 STD	<u>162,000</u>
SUB TOTAL		<u>81,000</u>	8 STD	162,000
GRAND TOTAL		842,359		2,468,223

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READY PRINT SURVEY
TYOLING

<u>PAPER</u>	<u>WHERE PRTD.</u>	<u>CIRCULATION</u>	<u>TYPE SECT.</u>	<u>CIRC. IN 4's</u>
CASPER TRIBUNE HER	ACME	12,963	12 STD	38,809
CHEYENNE TRIBUNE	B.C.P.	10,560	8 TAB	10,560
LAMARIE BULLETIN	B.C.P.	3,092	8 TAB	3,092
RAILING TIMES	B.C.P.	3,383	8 TAB	3,383
ROCK SPRINGS SUN MINOR	ACME	5,437	8 TAB	5,437
WORLD NEWS	B.C.P.	<u>4,244</u>	8 TAB	<u>4,244</u>
SUB TOTAL		39,679		65,605

AUGUST, 1955

READY PRINT SURVEY
CANADA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '55</u>
FORT WILLIAM	G.B.P.	14,000	16 TAB.	28,000
HAMILTON SPECTATOR	G.B.P.	93,700	16 TAB.	187,400
KINGSTON, ONT.	G.B.P.	20,400	16 TAB.	40,800
KIRLAND LAKE, ONT.	G.B.P.	6,100	16 TAB.	12,200
MONCTON TIMES TRANS.	G.B.P.	23,500	16 TAB.	47,000
MOOSE JAW SASH TIMES	G.B.P.	10,000	16 TAB.	20,000
OTTAWA CITIZEN	G.B.P.	57,500		
PETERBOROUGH EXAMINER	G.B.P.	17,900	16 TAB.	35,800
PORT ARTHUR NEWS CHRONICAL	G.B.P.	13,000	16 TAB.	26,000
PRINCE ALBERT D. HERALD	G.B.P.	6,700	16 TAB.	13,400
QUEBEC P.Q. CHRONICAL TEL.	G.B.P.	6,200	16 TAB.	12,400
ST. JOHN'S TELEGRAPH	G.B.P.	47,500	12 TAB.	73,250
ST. JOHN'S JRN'L. TIMES	G.B.P.		16 TAB.	95,000
SUDBURY STAR	G.B.P.	24,300	12 - 16 TAB.	85,050
SYDNEY NEWS SCOTIA	G.B.P.	28,450	16 TAB.	56,900
TIMMING DAILY PRESS	G.B.P.	11,150	16 TAB.	22,300
WESTERN STAR C. B.	G.B.P.	5,700	16-12 TAB.	19,950
MONTREAL STANDARD	G.B.P.	36,100		
MONTREAL STAR	G.B.P.	170,000	20 TAB.	425,000
TORONTO TELEGRAM	G.B.P.	277,000	16 TAB.	554,000
THE LONGERY FREDD PRESS	G.B.P.	100,200	16 TAB.	200,400

AUGUST, 1955READY PRINT SURVEY
CANADA (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
WINNIPEG FREE PRESS	O.P.	113,000	32 TAB.	452,000
LE SOLIEL	O.P.	111,300	18 TAB.	249,777
VICTORIA DAILY COLONIST	O.P.	51,000	12 TAB.	76,500
THE VANCOUVER PROVINCE	O.P.	194,000	24 TAB.	582,000
CALGARY ALBERTAN	O.P.	33,000	16 TAB.	66,000
THE WINNIPEG STAR	O.P.	74,000	12 TAB.	111,000
LA PATRIE MONTREAL	O.P.	28,000	16 TAB.	56,000
SASKATOON STAR PHOENIX	O.P.	36,000	4 TAB.	36,000
REGINA LEADER POST	O.P.	45,000	8 TAB.	45,000
WINNIPEG TRIBUNE	O.P.	70,000	16 TAB.	140,000
EDMONTON JOURNAL	O.P.	<u>82,000</u>	4 STL.	<u>82,000</u>
TOTAL		1,813,400		3,858,127
OTTAWA		<u>57,500</u>		
		<u>1,870,900</u>		<u>3,858,127</u>

O.P. = 1,903,277

G.B. = 1,954,850

JANUARY, 1955

JULY 1954 DRIVE

SUMMARY

	Value	Type	Value, in 4's
ALABAMA			
ALABAMA			
*Tribune Birmingham	3,400	D IAN.	3,400
*Tribune Montgomery Gazette	116,100	10 MTD.	34,025
*Tribune Mobile News	13,075	10 MTD.	103,725
TOTAL	132,575		511,150
ARKANSAS			
*Arkansas News Tribune	9,975	N. IAN.	10,000
*Arkansas Democrat-Gazette	13,000	10 IAN.	26,000
*Arkansas Gazette News	26,221	D IAN.	26,221
TOTAL	49,196		72,221
CALIFORNIA			
*Elmer's Independent Times	10,400	D IAN.	10,400
*Elmer's Times	99,107	10 MTD.	397,421
*Elmer's Independent Times	121,410	10 MTD.	242,820
*Elmer's Independent Times	25,000	D IAN.	11,000
*Elmer's Independent Times	21,000	D IAN.	21,000
*Elmer's Independent Times	10,107	D MTD.	21,000
*Elmer's Independent Times	125,000	10 MTD.	611,000
*Elmer's Independent Times	47,145	10 IAN.	141,420
*Elmer's Independent Times	40,000	D MTD.	20,100
*Elmer's Independent Times	140,500	10 MTD.	200,100
*Elmer's Independent Times	24,700	10 MTD.	24,700
*Elmer's Independent Times	24,000	10 MTD.	101,000
*Elmer's Independent Times	21,000	D MTD.	41,000
*Elmer's Independent Times	21,100	D MTD.	60,200
*Elmer's Independent Times	20,000	D IAN.	20,000
TOTAL	890,196		2,400,000
CONNECTICUT			
*Connecticut Spring Gazette	26,600	10 MTD.	26,600
TOTAL	26,600		26,600
CONNECTICUT			
CONNECTICUT			
CONNECTICUT			

NUMBER 1703

TOTAL TIME: 10,000

A. B. K.

	Time	Type Section	Time in A's
<u>GEORGIA</u>			
<u>IDAHO</u>			
✓ BOOTH STATEMAN	34,700	R. 100. (101.)	1 34,700
✓ IDAHO FALLS POST HERALD	15,955	R. 100. (101.)	31,955
✓ QUARTERLY IDAHO STATE JOURNAL	10,416	R. 100.	20,416
TOTAL	61,071		171,531
<u>ILLINOIS</u>			
<u>INDIANA</u>			
<u>IOWA</u>			
<u>KANSAS</u>			
✓ KANSAS CITY NEWS	7,026	R. 100.	7,026
✓ CLEVELAND JOURNAL	10,112	R. 100.	20,112
✓ INDEPENDENT JOURNAL	5,816	R. 100.	5,816
✓ PAMPHLET SUN	2,367	R. 100.	2,367
TOTAL	25,321		42,411
<u>KENTUCKY</u>			
<u>LOUISIANA</u>			
✓ LAFAYETTE NEWS	8,773	R. 100.	8,773
✓ LAFAYETTE NEWS	8,773		8,773
TOTAL	17,546		17,546
<u>MAINE</u>			
<u>MARYLAND</u>			
<u>MASSACHUSETTS</u>			
<u>MICHIGAN</u>			
<u>MINNESOTA</u>			
<u>MISSISSIPPI</u>			
✓ HAYNES TIMES	5,795	R. 100.	5,795
TOTAL	5,795		5,795
<u>MISSOURI</u>			

AUGUST, 1925

UNITED STATES DEPT. OF COMMERCE

TABLE

A. B. C.

	Circ.	Type Section	Circ. in 4's
ARIZONA			
ARIZONA STANDARD PAPER	28,079	B STD.	50,158
ARIZONA IMPRINT	7,026	B STD.	12,212
TOTAL	35,105		62,370
ARKANSAS			
NEVADA			
DAY TIMES	2,225	B TAB.	2,225
LAS VEGAS REVIEW-JOURNAL	19,232	12 STD.	57,697
LAS VEGAS SUN	11,348	16 TAB.	22,606
WIND STATE JOURNAL	18,210	B STD.	36,420
TOTAL	31,115		119,238
NEW HAMPSHIRE			
NEW JERSEY			
NEW MEXICO			
ALBUQUERQUE JOURNAL	46,771	12 STD.	129,113
CLOVIS NEWS JOURNAL	7,619	16 TAB.	14,230
FARMINGTON TIMES	3,836	B TAB.	3,836
HOBUS NEWS & SUN	7,960	B TAB.	7,960
PORTALES NEWS	3,091	B TAB.	3,091
SANTA FE NEWS JOURNAL	11,463	B TAB.	11,463
TOTAL	80,739		179,693
NEW YORK			
NORTH CAROLINA			
NORTH DAKOTA			
OHIO			
OKLAHOMA			
CLINTON NEWS	4,967	B TAB.	4,967
CUMING DAILY CITIZEN	4,798	B TAB.	4,798
DUNCAN BANNER	9,431	16 TAB.	18,862
DURANT DEM.	6,653	B TAB.	6,653
EL CITY NEWS	4,000	B TAB.	4,000
GUTHRIE LEADER	5,176	B TAB.	5,176
GUYMAN HERALD	3,346	B TAB.	3,346
LANTON CONSTITUTION PRESS	16,516	16 TAB.	33,116
SAVRE HEADLIGHT JOURNAL	2,804	B TAB.	2,804
SEMINOLE PRODUCER	2,021	B TAB.	2,021
W. A. RYAN	1,111	B TAB.	1,111
TOTAL	63,080		99,811

1705

AMMERS, 1955

HEAVY MAIL DELIVERY

PAGE 4

A. B. L.

	Units	Type SECTION	Units in 4's
CHICAGO			
PALESTINE TRIBUNE	17,764	8 TAB.	17,764
PALESTINE TRIBUNE	4,416	8 TAB.	4,416
TOTAL	21,978		21,978
PENNSYLVANIA			
SHORT ISLAND			
SOUTH CAROLINA			
SOUTH MARYLAND			
TAMMORRE			
TEXAS			
ALICE ECHO	5,491	8 TAB.	5,491
AMARILLO NEWS	58,649	12 STD.	176,047
AMARILLO NEWS	4,777	8 TAB.	4,777
AMARILLO NEWS	5,778	8 TAB.	5,778
AMARILLO NEWS	13,000	16 TAB.	20,800
AMARILLO NEWS	9,040	8 TAB.	9,040
AMARILLO NEWS	4,045	8 TAB.	4,045
AMARILLO NEWS	67,885	16 STD.	271,544
AMARILLO NEWS	3,300	8 TAB.	3,300
AMARILLO NEWS	2,654	8 TAB.	2,654
AMARILLO NEWS	13,000	16 TAB.	20,800
AMARILLO NEWS	6,050	8 TAB.	6,050
AMARILLO NEWS	4,600	8 TAB.	4,600
AMARILLO NEWS	3,448	8 TAB.	3,448
AMARILLO NEWS	4,030	8 TAB.	4,030
AMARILLO NEWS	18,784	16 TAB.	30,054
AMARILLO NEWS	44,430	12 STD.	177,720
AMARILLO NEWS	6,933	8 TAB.	6,933
AMARILLO NEWS	11,000	16 TAB.	22,000
AMARILLO NEWS	12,540	8 STD.	20,880
AMARILLO NEWS	20,000	16 TAB.	40,000
AMARILLO NEWS	7,480	8 TAB.	7,480
AMARILLO NEWS	7,216	16 TAB.	14,432
AMARILLO NEWS	6,901	16 TAB.	13,802
AMARILLO NEWS	13,136	16 TAB.	26,272
AMARILLO NEWS	3,206	8 TAB.	3,206
AMARILLO NEWS	6,234	8 TAB.	6,234
AMARILLO NEWS	6,385	8 TAB.	6,385
AMARILLO NEWS	17,549	16 TAB.	35,098
AMARILLO NEWS	26,291	16 TAB.	52,582
AMARILLO NEWS	5,823	8 TAB.	5,823
AMARILLO NEWS	10,577	8 TAB.	10,577
AMARILLO NEWS	6,000	8 TAB.	6,000
TOTAL	507,650		1,015,300

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

A C H E

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>UTAH</u>			
✓ DAILY STANDARD EXAMINER	26,919	8 STD.	53,838
✓ PROVO HERALD	<u>12,483</u>	8 STD.	<u>26,966</u>
TOTAL	39,402		78,804
<u>VERMONT</u>	_____	_____	_____
<u>VIRGINIA</u>	_____	_____	_____
<u>WASHINGTON</u>	_____	_____	_____
<u>WEST VIRGINIA</u>	_____	_____	_____
<u>WISCONSIN</u>	_____	_____	_____
<u>WYOMING</u>			
✓ CASPER TRIBUNE HERALD	12,853	12 STD.	38,809
✓ ROCK SPRINGS SUN-MINER	<u>5,437</u>	8 TAB.	<u>5,437</u>
TOTAL	18,400		44,246
 GRAND TOTAL	 1,986,874		 5,001,850

AUGUST, 1955READY PRINT SURVEYBUFFALO COLOR

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>ALABAMA</u>			
DO THAN EAGLE	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	17,108	8 STD.	34,216
SELMA TIMES JOURNAL	<u>9,815</u>	8 TAB.	<u>9,815</u>
TOTAL	48,101		86,387
<u>COLORADO</u>			
DUCANGO HERALD NEWS	3,385	8 TAB.	3,385
TOTAL	3,385		3,385
<u>FLORIDA</u>			
DELAND SUN NEWS	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENTINEL	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	9,789	8 STD.	19,578
FORT PIERCE NEW TRIBUNE	6,411	8 TAB.	6,411
GOALA STAR BANNER	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	<u>13,268</u>	8 STD.	<u>26,536</u>
TOTAL	79,957		141,783
<u>GEORGIA</u>			
GAINESVILLE TIMES	5,982	8 TAB.	5,982
TOTAL	5,982		5,982
<u>ILLINOIS</u>			
AUROIA BEACON NEWS	29,918	8 TAB.	29,918
CHICAGO DAILY NEWS	572,556	16 TAB.	1,145,112
JOLIET HERALD NEWS	33,482	8 TAB.	33,482
KANKAKEE JOURNAL	<u>23,311</u>	8 TAB.	<u>23,311</u>
TOTAL	659,257		1,231,823
<u>INDIANA</u>			
EVANSVILLE COURIER	89,316	16 STD.	357,264
HAMMOND TIMES	49,143	8 STD.	98,286
HUNTINGTON HERALD PRESS	8,441	8 TAB.	8,441
INDIANAPOLIS TIMES	98,673	12 STD.	296,019
KOKOMO TRIBUNE	<u>20,522</u>	8 TAB.	<u>20,522</u>
TOTAL	266,095		780,532

JANUARY 1955

HEAVY PRINT SURVEY

PAGE 2

BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>LOUISIANA</u>			
COUNCIL BLUFFS NONPAREIL	29,294	16 TAB.	58,588
TOTAL	29,294		58,588
<u>KANSAS</u>			
ARKANSAS CITY TRAVELER	6,375	8 TAB.	6,375
TOTAL	6,375		6,375
<u>KENTUCKY</u>			
CORBIN TIMES	4,341	8 TAB.	4,341
FRANKFORD STATE JOURNAL	5,667	8 TAB.	5,667
HARLEN ENTERPRISE	5,793	8 TAB.	5,793
TOTAL	15,801		15,801
<u>MISSISSIPPI</u>			
CORINTH CORINTHEAN	5,237	8 TAB.	5,237
TOTAL	5,237		5,237
<u>MONTANA</u>			
LEWISTOWN NEWS	5,000	8 TAB.	5,000
MILES CITY STAR	4,582	8 TAB.	4,582
TOTAL	9,582		9,582
<u>NEW JERSEY</u>			
ATLANTIC CITY PRESS	26,867	16 - TAB.	53,734
TOTAL	26,867		53,734
<u>NEW MEXICO</u>			
CARLSBAD CURRENT CITIZEN	8,625	8 TAB.	8,625
TOTAL	8,625		8,625
<u>NEW YORK</u>			
POUGHKEEPSIE NEW YORKER	26,699	16 TAB.	43,318
TOTAL	26,699		43,318
<u>NORTH CAROLINA</u>			
CONCORD TRIBUNE	8,685	8 TAB.	8,685
TOTAL	8,685		8,685

AUGUST, 1955

READY PRINT SURVEY

PAGE 3

BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>OHIO</u>			
COLUMBUS CITIZEN	104,943	12 STD.	314,829
ELYRIA CHRONICLE	19,415	8 TAB.	19,415
ZANESVILLE TIMES HERALD	<u>20,676</u>	8 STD.	<u>41,272</u>
TOTAL	144,994		375,516
<u>OKLAHOMA</u>			
ADA NEWS	9,093	8 TAB.	9,903
CHICKASAW EXPRESS	6,135	8 TAB.	6,135
NORMAN TRANSCRIPT	6,363	8 TAB.	6,363
PONCA CITY NEWS	<u>11,213</u>	8 TAB.	<u>11,213</u>
TOTAL	32,804		32,804
<u>SOUTH DAKOTA</u>			
HURON HURONITE & PLAINSMAN	11,610	8 STD.	23,220
TOTAL	11,610		23,220
<u>TENNESSEE</u>			
ELIZABETHTON STAR	5,802	8 TAB.	5,802
KNOXVILLE SENTINEL	<u>108,872</u>	12 STD.	<u>326,616</u>
TOTAL	114,674		332,418
<u>TEXAS</u>			
BORGER NEWS HERALD	10,369	8 STD.	20,738
PAUPA SPOKESMAN	<u>5,729</u>	12 TAB.	<u>11,458</u>
TOTAL	16,098		32,196
<u>VIRGINIA</u>			
PULASKI SOUTHWEST TIMES	4,863	8 TAB.	4,863
SUFFOLK NEWS HERALD	<u>6,899</u>	8 TAB.	<u>6,899</u>
TOTAL	11,762		11,762
<u>WYOMING</u>			
CHEYENNE TRIBUNE	10,560	8 TAB.	10,560
LARAMIE BULLETIN	3,092	8 TAB.	3,092
RANDOLPH TIMES	3,383	8 TAB.	3,383
WORLD NEWS	<u>4,244</u>	8 TAB.	<u>4,244</u>
TOTAL	21,279		21,279
GRAND TOTAL	1,541,513		3,289,032

READY PRINT SURVEYEASTERN COLOR

	Circ.	TYPE SECTION	Circ. in 4's
<u>CONNECTICUT</u>			
BRIDGEPORT POST	61,132	3 TAB.	244,528
HARTFORD CURRENT	130,826	12 STD.	392,478
NEW HAVEN REGISTER	93,386	12 STD.	280,158
WATERBURY AMERICAN REPUBLICAN	47,857	8 TAB. 8 STD.	131,571
TOTAL	285,344		1,048,735
<u>FLORIDA</u>			
MIAMI BEACH SUN	9,325	8 TAB.	9,325
TOTAL	9,325		9,325
<u>MAINE</u>			
DANFORTH NEWS	73,999	8 STD.	147,198
TOTAL	73,999		147,198
<u>MASSACHUSETTS</u>			
LOWELL SUN	27,569	8 STD.	55,138
WORCESTER TELEGRAM	104,000	12 STD.	312,000
BOSTON HERALD TRAVELER	348,071	8 STD.	1,396,143
TOTAL	131,569		1,353,280
<u>NEW HAMPSHIRE</u>			
MANCHESTER SUN NEWS	34,617	8 STD.	69,234
TOTAL	34,617		69,234
<u>NEW JERSEY</u>			
ASBURY PARK PRESS	26,000	8 STD.	52,000
NEWARK NEWS	288,382	10 STD.	720,955
NEW BRUNSWICK HOME NEWS	28,235	16 TAB.	56,470
TOTAL	342,612		829,425
<u>NORTH CAROLINA</u>			
GREENSBORO NEWS	88,830	12 STD.	266,490
TOTAL	88,830		266,490
<u>RHODE ISLAND</u>			
PROVIDENCE JOURNAL	179,065	10 STD.	447,662
TOTAL	179,065		447,662
GRAND TOTAL	1,144,961		3,681,339

AUGUST, 1955

READY PRINT SURVEYFORT WORTH

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>TEXAS</u>			
DALLAS TIMES HERALD	164,564	16 STD.	658,256
FORT WORTH STAR TELEGRAM	<u>225,325</u>	16 STD.	<u>901,300</u>
TOTAL	389,889		1,559,556
GRAND TOTAL	389,889		1,559,556

/ AUGUST, 1955

DEADLY FIGHT SQUADRYGREATER BUFFALO COLLEGE

	CIRC.	SECTION	CIRC. IN 4's
<u>ALABAMA</u>			
MOBILE PRESS REGISTER	85,005	10 STD.	212,512
TALLADEGA DAILY HOME	<u>2,900</u>	8 TAB.	<u>2,900</u>
TOTAL	87,905		215,412
<u>ARKANSAS</u>			
PINE BLUFF COMMERCIAL	<u>14,801</u>	8 TAB.	<u>14,801</u>
TOTAL	14,801		14,801
<u>FLORIDA</u>			
MERIDIAN TIMES	2,643	6 STD.	3,967
MIAMI NEWS	<u>97,541</u>	14 STD.	<u>361,358</u>
ST. AUGUSTINE RECORD	<u>5,623</u>	4 STD.	<u>5,623</u>
TOTAL	105,809		370,948
<u>GEORGIA</u>			
ATLANTA JOURNAL CONSTITUTION	<u>480,919</u>	12 STD.	<u>1,642,797</u>
TOTAL	480,919		1,642,797
<u>ILLINOIS</u>			
CHICAGO SUN TIMES	<u>973,327</u>	20 TAB.	<u>1,623,317</u>
TOTAL	973,327		1,623,317
<u>INDIANA</u>			
INDIANAPOLIS STAR	295,022	16 STD.	1,180,088
MUNCIE STAR	<u>39,653</u>	14 STD.	<u>103,985</u>
FORT WAYNE JOURNAL GAZETTE	<u>90,000</u>	12 STD.	<u>320,000</u>
TOTAL	414,675		1,554,073
<u>IOWA</u>			
DUBUQUE TELEGRAPH HERALD	39,636	6 STD.	59,454
SIOUX CITY JOURNAL	<u>63,973</u>	10 STD.	<u>159,932</u>
WATERLOO COURIER	<u>48,943</u>	6 STD.	<u>73,628</u>
TOTAL	152,552		292,815
<u>KANSAS</u>			
GOODLAND NEWS	<u>2,700</u>	8 TAB.	<u>2,700</u>
TOTAL	2,700		2,700

August 1955

READY PRINT SURVEY

PAGE 2

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN A's
<u>KENTUCKY</u>			
HENDERSON GLEANER JOURNAL	6,574	8 TAB.	6,574
LOUISVILLE COURIER TIMES	<u>308,325</u>	8 STD.	<u>616,650</u>
TOTAL	314,899		623,224
<u>LOUISIANA</u>			
BOZALUSA NEWS	5,399		5,399
TOTAL	<u>5,399</u>		<u>5,399</u>
<u>MARYLAND</u>			
BALTIMORE SUN	308,969	8 STD-12 TAB.	1,079,991
TOTAL	<u>308,969</u>		<u>1,079,991</u>
<u>MASSACHUSETTS</u>			
BOSTON GLOBE	351,730	10 STD.	914,325
BOSTON POST	<u>280,930</u>	10 STD.	<u>567,315</u>
TOTAL	632,660		1,481,640
<u>MICHIGAN</u>			
DETROIT FREE PRESS	508,000	12 STD.	1,524,000
DETROIT NEWS	<u>774,000</u>	12 STD.	<u>1,722,000</u>
TOTAL	1,082,000		3,246,000
<u>MINNESOTA</u>			
DULUTH NEWS TRIBUNE	71,059	10 STD.	177,647
ST. PAUL PIONEER PRESS	<u>123,183</u>	10 STD.	<u>433,297</u>
TOTAL	244,242		610,944
<u>MISSISSIPPI</u>			
KANSAS CITY STAR	351,503	12 STD.	1,084,509
ST. LOUIS GLOBE DEM.	<u>256,356</u>	12 STD.	<u>1,063,062</u>
TOTAL	607,859		2,147,571
<u>MONTANA</u>			
BOZEMAN CHRONICLE	4,777	8 TAB.	4,777
TOTAL	<u>4,777</u>		<u>4,777</u>
<u>NEW MEXICO</u>			
ROSWELL RECORD	9,944	8 TAB.	9,944
TOTAL	<u>9,944</u>		<u>9,944</u>

JANUARY 1955

HEAVY BLUNT SURVEY

PAGE 3

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN A's
<u>NEW YORK</u>			
BUFFALO COURIER EXPRESS	299,263	14 STD.	1,047,420
NEW YORK HERALD TRIBUNE	528,253	6 STD.	792,379
NEW YORK POST	277,808	12 STD.	416,712
ROCHESTER DEM. CHRONICLE	172,719	14 STD.	599,466
SYRACUSE HERALD AMERICAN	221,954	12 STD.	665,862
SYRACUSE POST STANDARD	101,254	12 STD.	303,762
UTICA OBSERVER	<u>49,745</u>	10 STD.	<u>126,352</u>
TOTAL	1,690,996		3,949,963
<u>NORTH CAROLINA</u>			
ROANOKE RAPIDS HERALD	4,063	8 TAB.	4,063
TOTAL	<u>4,063</u>		<u>4,063</u>
<u>NORTH DAKOTA</u>			
FARGO FORUM	90,845	10 STD.	122,112
TOTAL	<u>90,845</u>		<u>122,112</u>
<u>OHIO</u>			
CAMBRIDGE JERREBSONIAN	13,825	8 TAB.	13,825
CINCINNATI INQUIRER	282,550	12 STD.	847,650
CLEVELAND PALIN DEALER	513,877	12 STD.	1,539,621
COLUMBUS DISPATCH	120,366	12 STD.	691,098
COLUMBUS STAR	15,000	12 TAB.	112,000
LORAIN JOURNAL TIMES HERALD	22,644	8 TAB.	22,644
MAHONDI NEWS JOURNAL	31,872	8 TAB.	31,872
TOLDO BLADE & TIMES	166,660	14 STD.	483,310
YOUNGSTOWN VINDICATOR	139,230	12 STD.	417,660
DAYTON JOURNAL HERALD	<u>97,750</u>	8 STD.	<u>144,500</u>
TOTAL	1,573,104		4,451,180
<u>PENNSYLVANIA</u>			
ALLENTOWN CALL CHRONICLE	65,097	12 STD.	195,291
ERIE DISPATCH	44,905	12 STD.	134,715
ERIE TIMES	40,169	12 STD.	120,507
LANCASTER SUN NEWS	67,599	14 STD.	236,576
UNION TOWN EVENING STANDARD	19,000	8 TAB.	19,000
UNIONTOWN MORNING HERALD	<u>11,000</u>	8 TAB.	<u>11,000</u>
TOTAL	267,770		717,089
<u>SOUTH DAKOTA</u>			
SIOUX CITY FALLS ARMOUS LEADER	51,053	10 STD.	127,362
TOTAL	<u>51,053</u>		<u>127,362</u>

AUGUST, 1955

HEAVY PRINT SURVEY

PAGE 4

GREATER BUFFS & COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>TENNESSEE</u>			
MEMPHIS GAZETTE MAIL	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	<u>191,40</u>	10 STD.	<u>478,320</u>
TOTAL	196,071		483,011
<u>TEXAS</u>			
DALLAS NEWS	197,563	12 STD.	992,689
HILSBORO MIRROR	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	219,427	12 STD.	658,281
SAN ANTONIO EXPRESS	<u>113,055</u>	13 STD.	<u>395,437</u>
TOTAL	534,579		1,651,441
<u>VERMONT</u>			
DURLINGTON NEWS	12,842	8 TAB.	12,842
TOTAL	12,842		12,842
<u>WASHINGTON</u>			
WENATCHEE WORLD	18,200	8 TAB.	18,200
TOTAL	18,200		18,200
<u>WASHINGTON, D.C.</u>			
WASHINGTON STAR	273,244	10 STD.	683,110
TOTAL	273,244		683,110
<u>WISCONSIN</u>			
LAS CROIXE JOURNAL	32,546	6 STD.	48,819
RACINE BULLETIN	<u>28,000</u>	6 STD.	<u>44,000</u>
TOTAL	61,546		92,819
SUB TOTAL	<u>9,789,288</u>		<u>26,843,474</u>
<u>CANADA</u>			
FORT WILLIAM	14,000	16 TAB.	28,000
HAMILTON SPECTATOR	93,700	16 TAB.	187,400
KINGSTON ONT.	20,400	16 TAB.	40,800
KIRLAND LAKE, ONT.	6,100	16 TAB.	12,200
MONTON TIMES TRANS.	23,500	16 TAB.	47,000
MOOSE JAW SASH TIMES	10,000	16 TAB.	20,000
OTTAWA CITIZEN	57,500		
PETERSBOROUGH EXAMINER	17,900	16 TAB.	35,800
FORT ARTHUR NEWS CHRONICAL	13,000	16 TAB.	26,000
PRINCE ALBERT D. HERALD	6,700	16 TAB.	13,400

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

GREATER BUFFALO COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>CANADA (CONT.)</u>			
QUEBEC P.Q. CHRONICAL TE.	6,200	16 TAB.	12,400
ST. JOHN'S TELEGRAPH	47,500	12 TAB.	73,250
ST. JOHN'S JOUR. TIMES		16 TAB.	95,000
SUDBURY STAR	24,300	12-16 TAB.	85,050
SYDNEY NOVO SCOTIA	28,450	16 TAB.	56,900
TIMMINS DAILY PRESS	11,150	16 TAB.	22,300
WESTERN STAR C.B.	5,700	16-12 TAB.	19,950
MONTREAL STANDARD	35,100		
MONTREAL STAR	170,000	20 TAB.	425,000
TORONTO TELEGRAM	277,000	16 TAB.	554,000
THE LONDERY FREE PRESS	<u>100,200</u>	16 TAB.	<u>200,400</u>
TOTAL	906,400		1,954,850
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GRAND TOTAL	10,695,688		28,798,324

AUGUST, 1955READY PRINT SURVEYHEARST

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>CALIFORNIA</u>			
LOS ANGELES EXAMINER	671,613	14 STD.	2,350,645
SAN FRANCISCO EXAMINER	<u>499,089</u>	14 STD.	<u>1,746,811</u>
TOTAL	1,170,705		4,097,456
<u>ILLINOIS</u>			
CHICAGO HERALD AMERICAN	753,122	14 STD.	2,635,929
TOTAL	753,122		2,635,929
<u>MARYLAND</u>			
BALTIMORE AMERICAN	321,469	14 STD.	1,445,141
TOTAL	321,469		1,445,141
<u>MASSACHUSETTS</u>			
BOSTON SUN ADVERTISER	547,691	12 STD.	1,643,073
TOTAL	547,691		1,643,073
<u>MICHIGAN</u>			
DETROIT TIMES	528,009	12 STD.	1,584,027
TOTAL	528,009		1,584,027
<u>NEW YORK</u>			
ALBANY TIMES UNION	116,052	12 STD.	348,156
NEW YORK JOURNAL AMERICAN	<u>866,233</u>	14 STD.	<u>3,081,815</u>
TOTAL	982,285		3,379,971
<u>TEXAS</u>			
SAN ANTONIO LIGHT	141,000	14 STD.	493,500
TOTAL	141,000		493,500
<u>WASHINGTON</u>			
SEATTLE POST INTELLIGENCER	<u>263,831</u>	14 STD.	<u>923,408</u>
TOTAL	263,831		923,408
<u>WISCONSIN</u>			
MILWAUKEE SENTINEL	<u>227,930</u>	14 STD.	<u>797,755</u>
TOTAL	227,930		797,755
GRAND TOTAL	<u>4,936,039</u>		<u>17,000,350</u>

August, 1955

HEAVY FLIGHT SURVEY

L.C.F.

	Class.	Type Section	Circ. in Area
ALABAMA			
BIRMINGHAM NEWS	211,270	12 STD.	633,810
DECATUR DAILY	13,650	8 STD.	27,300
GADSDEN TIMES	21,895	8 STD.	43,790
HUNTSVILLE TIMES	18,704	8 STD.	37,408
MONTGOMERY ADV.	72,948	8 STD.	145,896
TUSCALOOSA NEWS	15,560	8 STD.	31,120
ANDALUSIA VINNIE'S DISPATCH	3,000	8 TAB.	3,000
TOTAL	377,027		925,324
ARKANSAS			
LITTLE ROCK ANN. GAZETTE	105,387	10 STD.	263,467
TOTAL	105,387		263,467
COLORADO			
COLORADO SPRINGS FREE PRESS	9,403	8 STD.	18,806
TOTAL	9,403		18,806
FLORIDA			
DADECOUNTY HERALD	10,379	8 STD.	21,158
CLEARWATER SUN	9,914	8 STD.	19,828
GAINESVILLE SUN	10,496	4 STD.	10,496
LAKELAND LEDGER	15,434	8 STD.	30,868
MIAMI HERALD	255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR	36,977	12 STD.	170,931
PENSACOLA JOURNAL NEWS	46,000	8 STD.	92,000
ST. PETERSBURG TIMES	59,568	12 STD.	178,704
TOTAL	464,944		1,488,321
GEORGIA			
AUGUSTA CHRONICLE HERALD	61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER	45,526		136,608
MACON TELEGRAPH NEWS	50,860		152,580
SAVANNAH NEWS PRESS	58,686		176,058
WAYCROSS JOURNAL	8,000	8 TAB.	8,000
TOTAL	224,317		718,186
IDAHO			
LEWISTON TRIBUNE	15,000	8 TAB.	15,000
TOTAL	15,000		15,000

AUGUST, 1935

HEAVY MAIL SURVEY

PAGE 2

LaPa

	<u>CIRC.</u>	<u>TYPE</u> <u>SECTION</u>	<u>CIRC. IN</u> <u>LA</u>
<u>ILLINOIS</u>			
BLOOMINGTON PANTAGRAPH	33,215	4 STD.	33,215
CHAMPAIGN NEWS GAZETTE	29,908	8 STD.	29,908
DANVILLE COMMERCIAL NEWS	34,237	8 STD.	68,474
PEORIA JOURNAL STAR	87,719	16 STD.	358,876
ROCKFORD STAR	62,665	8 STD.	125,330
TOTAL	247,535		655,471
<u>INDIANA</u>			
FORT WAYNE NEWS SENTINEL	70,577	8 STD.	181,114
MARION CHRONICLE	19,989	4 STD.	19,989
NEW ALBANY LEADER	6,579	8 TAB.	6,579
TERRE HAUTE TRIBUNE	46,700	4 STD.	46,700
TOTAL	163,245		254,302
<u>LOWA</u>			
CEDAR RAPIDS GAZETTE	77,877	6 STD.	87,712
DAVENPORT DEM.	71,285	8 STD.	71,285
TOTAL	149,162		158,997
<u>KANSAS</u>			
HAYS NEWS	6,321	8 TAB.	6,321
HUTCHINSON NEWS HERALD	54,057	8 STD.	108,114
SALINA JOURNAL	24,831	8 STD.	49,662
TOPEKA DAILY CAPITAL	43,446	8 STD.	130,338
WICHITA BEACON	179,279	12 STD.	417,837
WICHITA EAGLE	112,223	8 STD.	236,446
TOTAL	405,157		953,292
<u>KENTUCKY</u>			
ASHLAND INDEPENDENT	16,795	16 TAB.	33,590
BOWLING GREEN PARK CITY NEWS	10,281	8 TAB.	10,281
DANVILLE ADVOCATE	3,675	8 TAB.	3,675
LEXINGTON HERALD LEADER	52,664	8 STD.	105,328
PADUCAN SUN DEMOCRAT	28,637	8 TAB.	28,637
TOTAL	112,052		181,713
<u>LOUISIANA</u>			
LAKE CHARLES AMERICAN PRESS	22,579	8 STD.	45,158
MONROE WORLD	32,025	8 STD.	64,050
NEW ORLEANS ITEM	107,571	8 STD.	215,142
SHREVEPORT TIMES	95,130	12 STD.	285,390
TOTAL	257,305		610,400

AUGUST, 1933

HEAVY PRINT SURVEY

PAGE 3

I.R.P.

	CARD.	TYPE SECTION	CIRC. IN A's
<u>MAINE</u>			
PORTLAND SUN TELEGRAM	103,000	12 STD.	309,000
TOTAL	103,000		309,000
<u>MINN. LAKE</u>			
DUMFRIESLAND SUN TIMES	89,516	12 STD.	88,548
TOTAL	89,516		88,548
<u>MASSACHUSETTS</u>			
LYNN TELEGRAM NEWS	22,436	4 STD.	22,436
NEW BEDFORD STANDARD TIMES	90,824	8 STD.	101,648
TOTAL	73,260		124,084
<u>MICHIGAN</u>			
GRAND RAPIDS HERALD	79,000	16 STD.	316,000
TOTAL	79,000		316,000
<u>MISSISSIPPI</u>			
GREENVILLE DELTA DEM. TIMES	11,631	8 TAB.	11,631
NATCHEZ DEM.	5,558	8 TAB.	5,558
JACKSON STATE TIMES	45,000	8 STD.	90,000
TUPELO MISS. HERALD	12,900	8 STD.	25,800
VICKSBURG MISS. HERALD	9,700	8 TAB.	9,700
JACKSON CLARION LEDGER	79,000	16 STD.	316,000
TOTAL	163,389		457,889
<u>MISSOURI</u>			
JOPLIN GLOBE	34,815	8 STD.	69,630
ST. JOSEPH NEWS PRESS	90,213	8 STD.	100,426
TOTAL	85,028		170,056
<u>NEW JERSEY</u>			
NEWARK STAR LEDGER	297,328	12 STD.	891,984
TRENTON TIMES	66,761	8 STD.	133,522
TOTAL	364,089		1,025,506

AUGUST, 1955

READY PRINT SURVEY

PAGE 4

1.C.P.

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>NEW MEXICO</u>			
LAS CRUCES SUN NEWS	3,709	8 TAB.	3,709
SILVER CITY PRESS	<u>3,600</u>	8 TAB.	<u>3,600</u>
TOTAL	7,309		7,309
<u>NEW YORK</u>			
BINGHAMTON PRESS	61,946	16 STD.	247,784
JAMAICA LONG ISLAND PRESS	290,000	12 STD.	870,000
NEW YORK MIRROR	1,999,216	16 TAB.	3,198,426
GARDEN CITY NEWS DAY	<u>255,000</u>	8 TAB.	<u>255,000</u>
TOTAL	2,306,162		4,771,220
<u>NORTH CAROLINA</u>			
ASHEVILLE CITIZEN TIMES	52,367	8 STD.	104,734
CHARLOTTE OBSERVER	146,180	12 STD.	438,540
DURHAM HERALD	38,801	8 STD.	73,602
ELIZABETH CITY ADVANCE	7,494	8 TAB.	7,494
HENDERSON DISPATCH	4,927	8 TAB.	4,927
KANNAPOLIS INDEPENDENT	10,399	8 STD.	20,718
RALEIGH NEWS & OBSERVER	129,607	10 STD.	324,017
RALEIGH TIMES	15,179	8 TAB.	15,179
WILMINGTON	28,290	8 STD.	56,500
MOREHEAD CITY	3,500	8 TAB.	3,500
WINSTON SALEM	<u>66,129</u>	12 STD.	<u>198,387</u>
TOTAL	502,793		1,247,298
<u>NORTH DAKOTA</u>			
GRAND FORKS HERALD	34,250	8 STD.	68,500
TOTAL	34,250		68,500
<u>OHIO</u>			
ARION DRAGON JOURNAL	199,201	16 STD.	636,804
ATHENA MESSENGER	19,194	8 STD.	38,388
CANTON REPOSITORY	70,645	8 STD.	141,290
DAYTON NEWS	168,128	12 STD.	504,384
FRONTON TRIBUNE	9,437	8 STD.	18,874
LIMA NEWS	35,977	8 STD.	71,954
MIDDLETON NEWS JOURNAL	19,037	4 STD.	19,037
SPRINGFIELD NEWS SUN	<u>28,182</u>	8 STD.	<u>76,764</u>
TOTAL	519,801		1,506,995

AUGUST, 1955

READY PRINT SURVEY

PAGE 5

I.C.P.

	Circ.	TYPE SECTION	Circ. in 4's
<u>OKLAHOMA</u>			
TULSA WORLD	145,258	16 STD.	581,032
TOTAL	145,258		581,032
<u>PENNSYLVANIA</u>			
HARRISBURG PATRIOT NEWS	114,583	12 STD.	343,749
PITTSBURGH SUN TELEGRAPH	453,000	20 TAB.	1,132,500
READING EAGLE	99,000	8 STD.	472,000
SCRANTON SCRANTONIAN	48,531	8 STD.	97,062
WILKES BARRE INDEPENDENT	46,840	4 STD.	46,840
PHILADELPHIA MAYFAIR TIMES	17,000	8 STD.	34,000
TOTAL	738,854		2,126,151
<u>SOUTH CAROLINA</u>			
ANDERSON INDEPENDENT MAIL	42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER	60,533	8 STD.	131,066
COLUMBIA STATE	83,108	12 STD.	249,324
GREENVILLE NEWS	78,843	12 STD.	236,535
ORANGEBURG TIMES & DEM.	5,798	8 STD.	11,596
SPARTANBURG HERALD JOURNAL	37,908	8 STD.	75,816
CHARLESTON EVENING POST	31,500	4 STD.	31,500
TOTAL	339,852		819,137
<u>SOUTH DAKOTA</u>			
ABERDEEN AMERICAN NEWS	20,201	8 STD.	40,400
RAPID CITY JOURNAL	24,319	8 STD.	48,638
WATERTOWN PUBLIC OPINION	12,248	8 TAB.	12,248
TOTAL	56,768		101,286
<u>TENNESSEE</u>			
BRISTOL HERALD	23,879	8 STD.	47,798
CHATTANOOGA TIMES	88,764	12 STD.	266,392
JACKSON SUN	15,130	8 STD.	30,260
KINGSPORT TIMES	20,561	12 STD.	61,683
KNOXVILLE JOURNAL	88,456	12 STD.	265,368
GREENVILLE DAILY SUN	12,000	4 STD.	12,000
TOTAL	248,790		683,401

READY PRINT SURVEY

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I.C.P.

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN</u> <u>4's</u>
<u>TEXAS</u>			
ABILENE REPORTER NEWS	36,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN	49,731	12 STD.	149,193
BIG SPRING HERALD	8,600	8 STD.	17,200
CORPUS CHRISTI CALLED TIMES	67,007	8 STD-4STD.	201,000
DENISON HERALD	10,414	8 STD.	20,828
DENTON "ED. CHRONICLE	8,465	8 STD.	16,930
GREENVILLE BANNER	8,021	8 STD.	16,042
HOUSTON POST	229,000	12 STD.	675,000
KILGORE HERALD	6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER	11,756	8 STD.	23,512
MOUNT PLEASANT TIMES	3,000	8 TAB.	3,000
ORANGE LEADER	6,379	8 STD.	12,758
PARIS NEWS	12,500	8 STD.	25,000
PORT ARTHUR NEWS	23,383	12 STD.	73,149
S. N. ANGELO STANDARD TIMES	35,323	8 STD.	70,646
SNYDER NEWS TEXAS	6,233	8 STD.	12,466
TEXAS CITY SUN	5,031	8 STD.	10,062
TYLER COURIER TIMES	22,743	8 STD.	45,486
WACO TRIBUNE	48,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES	52,000	8 STD.	104,000
HEREFORD TEXAS BRAND	2,750	8 STD.	5,500
SAN ANTONIO LIGHT	141,000	8 TAB.	141,000
TOTAL	665,496		1,846,634
<u>VIRGINIA</u>			
DANVILLE REGISTER	18,584	8 STD.	37,168
LYNCHBURG NEWS	22,720	8 STD.	45,440
MARTINSVILLE BULLETIN	8,393	8 STD.	16,786
NORFOLK VA. PILOT	140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH	176,679	16 STD.	706,716
ROANOKE TIMES	80,195	10 STD.	225,487
FARMVILLE HERALD	4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH	16,000	4 STD.	16,000
TOTAL	466,771		1,471,797
<u>WASHINGTON</u>			
TACOMA NEWS TRIBUNE	70,626	16 STD.	282,504
WENATCHEE WORLD	16,698	4 STD.	16,698
PASCO TRI-CITY HERALD	17,000	8 TAB.	17,000
TOTAL	843,872		2,710,927
<u>WASHINGTON, D.C.</u>			
WASHINGTON POST & T.H.	423,000	20 STD.	2,115,000
TOTAL	423,000		2,115,000

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AUGUST, 1955

HEAVY FLIGHT SURVEY

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1955

	CARRIA	TYPE SECTION	CING. IN A's
<u>WEST VIRGINIA</u>			
BRUNLEY POST HERALD	30,828	16 TAN.	61,695
CHARLESTON TELEGRAPH & SUNDAY NEWS	35,799	14 STD.	107,877
CHARLESTON GAZETTE	88,880	8 STD.	176,860
CHARLESTON MAIL	60,864	8 STD.	127,728
CHARLESTON EXPLORER	79,399	1 & 8 STD.	118,083
FARMINGTON TIMES	17,773	8 STD.	35,546
FARMINGTON HERALD ADVERTISER	90,398	8 STD.	100,776
FARMINGTON NEWS SENTINEL	42,653	11 STD.	45,714
WHEELING NEWS HERALD	50,900	11 STD.	151,300
TOTAL	401,371		873,648
<u>WEST VIRGINIA</u>			
MARTIN STATE JOURNAL	81,000	8 STD.	162,000
TOTAL	81,000		162,000
SUB TOTAL	11,040,306		21,277,658

SUB TOTAL 27,277,658

SPANISH 546,000

STARS & STRIPES 100,000

(GRAND) TOTAL 27,973,658

ANNUAL 1955

HEAVY TRAIL SURVEYWIN PLANT

	<u>LINE</u>	<u>TYPE SECTION</u>	<u>LINE IN</u> <u>4th</u>
<u>ARKANSAS</u>			
FORT SMITH TIMES RECORD	71,280	8 TAN.	71,280
LITTLE ROCK ANN. DEM. X	<u>91,979</u>	8 STD.	<u>102,878</u>
TOTAL	123,219		215,158
<u>CALIFORNIA</u>			
LOS ANGELES TIMES X	787,050	14 STD.	2,795,253
OAKLAND TRIBUNE X	379,491	16 STD.	871,954
PASADENA STAR NEWS X	35,795	8 STD.	71,790
SAN FRANCISCO CHRONICLE X	246,568	10 STD.	615,384
SANTA ROSA PRESS DEM. X	<u>88,075</u>	8 STD.	<u>26,150</u>
TOTAL	1,336,980		4,379,361
<u>COLORADO</u>			
DENVER POST & CO. X	350,108	12 STD.	1,070,324
ROCKY MT. NEWS X	155,771	24 TAN.	465,113
GRAND JUNCTION SENTINEL X	13,778	4 STD.	13,778
PUEBLO CHIEFTAIN STAR JOURNAL X	<u>35,382</u>	16 TAN.	<u>70,764</u>
TOTAL	554,939		1,600,979
<u>CONNECTICUT</u>			
BRIDGEPORT HERALD X	94,110	16 TAN.	118,220
TOTAL	94,110		118,220
<u>FLORIDA</u>			
DAYTONA BEACH NEWS JOURNAL X	23,880	8 STD.	47,760
JACKSONVILLE TIMES UNION X	148,535	12 STD.	445,605
TAMPA TRIBUNE (CP)	<u>136,666</u>	12 STD.	<u>722,798</u>
TOTAL	309,081		916,163
<u>ILLINOIS</u>			
CHICAGO TRIBUNE X	1,792,384	10 STD.	3,480,950
TOTAL	1,792,384		3,480,950
<u>INDIANA</u>			
SOUTH BEND TRIBUNE X	111,558	16 STD.	446,252
TOTAL	111,558		446,252

AUGUST, 1955

READY PRINT SURVEYPAGE 2OWN PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>IOWA</u>			
DES MOINES REGISTER TRIBUNE X	521,152	10 STD.	1,302,380
TOTAL	521,152		1,302,380
<u>KANSAS</u>			
GREAT BEND TRIBUNE	8,599	4 STD.	8,599
TOTAL	8,599		8,599
<u>KENTUCKY</u>			
OWENSBORO MESSENGER	23,412		23,412
TOTAL	23,412		23,412
<u>LOUISIANA</u>			
NEW ORLEANS TIMES X	276,265	12 STD.	828,795
NEW ORLEANS STATE X	88,802	8 STD.	176,604
TOTAL	365,068		1,005,401
<u>MASSACHUSETTS</u>			
SPRINGFIELD SUN REPUBLICAN X	106,753	12 STD.	320,259
TOTAL	106,753		320,259
<u>MINNESOTA</u>			
ALBERT LEA TRIBUNE	9,356	4 STD.	9,356
MINNEAPOLIS TRIBUNE X	621,792	12 STD.	1,865,376
TOTAL	631,148		1,874,732
<u>MISSISSIPPI</u>			
MERIDIAN STAR X	20,255	4 STD.	20,255
TOTAL	20,255		20,255
<u>MISSOURI</u>			
INDEPENDENCE NEWS	855	8 STD.	1,730
JEFFERSON CITY POST TRIBUNE	13,505	4 STD.	13,505
ST. LOUIS POST DISPATCH ROTO X	473,618	12 STD.	1,420,854
TOTAL	487,988		1,435,089

August 1955

READY PRINT SURVEY

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Q/R PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>MONTANA</u>			
BILLINGS GAZETTE X	35,332	10 STD.	88,330
GREAT FALLS TRIBUNE X	36,300	8 TAB.	36,300
MISSOULA SENTINEL X	16,495	8 STD.	32,990
TOTAL	88,027		157,520
<u>NEBRASKA</u>			
LINCOLN JOURNAL STAR X	49,293	12 STD.	147,879
OMAHA WORLD HERALD X	361,246	12 STD.	783,738
TOTAL	310,539		931,617
<u>NEW YORK</u>			
ELMIRA SUN TELEGRAPH & BURLINGAME	48,443	12 STD.	145,329
BROOKLYN EAGLE	164,227	16 TAB.	328,454
NEW YORK SUN NEWS X	3,652,302	16 TAB.	7,304,604
TOTAL	3,864,972		7,778,387
<u>NORTH CAROLINA</u>			
CHARLOTTE NEWS X	69,014	8 TAB.	69,014
TOTAL	69,014		69,014
<u>OHIO</u>			
COSHOCTON TRIBUNE	10,305	4 STD.	10,305
TOTAL	10,305		10,305
<u>OKLAHOMA</u>			
ENID NEWS X	19,940	4 STD.	19,990
HENRYETTA FREE LANCE	3,998	8 TAB.	3,998
MUSKOGEE TIMES DEM.	15,255	16 TAB.	30,510
STILLWATER NEWS PRESS	7,387	12 STD.	14,774
OKLAHOMA CITY OKLAHOMAN X	266,593	8 STD.	793,779
TOTAL	311,223		863,051
<u>OREGON</u>			
PORTLAND OREGONIAN X	294,216	16 STD.	1,176,864
PORTLAND JOURNAL X	214,380	16 STD.	857,520
TOTAL	508,596		2,034,384
<u>PENNSYLVANIA</u>			
PHILADELPHIA BULLETING X	699,777	24	4,198,662
PHILADELPHIA INQUIRER X RSTO	1,146,321	16 STD.	4,575,284
PITTSBURGH PRESS X	472,163	16 STD.	1,888,412
TOTAL	2,318,201		10,662,358

AUGUST, 1955

READY PRINT SURVEY

PAGE 4

OWN PLANT

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>TENNESSEE</u>			
MEMPHIS COMMERCIAL APPEAL X	251,361	12 STD.	754,083
TOTAL	251,361		754,083
<u>TEXAS</u>			
BEAUMONT ENTERPRISE X	71,394	16 STD.	285,776
GALVESTON TRIBUNE X	23,027	12 STD.	69,051
GRADWATER MINOR	4,534	8 TAB.	4,534
LAREDO TIMES	15,191	28 TAB.	53,168
TOTAL	339,471		412,599
<u>UTAH</u>			
SALT LAKE CITY TRIBUNE X	174,786	12 STD.	534,358
TOTAL	174,786		534,358
<u>VIRGINIA</u>			
NEW PORT NEWS PRESS <i>SOUTHERN COLOR</i>	43,600	8 STD.	87,200
TOTAL	43,600		87,200
<u>WASHINGTON</u>			
SEATTLE TIMES X	237,502	16 STD.	950,008
SPOKANE SPOKESMAN X	141,548	12 STD.	424,644
WALLA WALLA UNION BULLETIN	16,004	8 TAB.	16,004
YAKIMA HERALD	31,405	4 STD.	31,405
BILLINGHAM HERALD	10,376	4 STD.	20,376
OLYMPIA OLYMPIAN	10,682	4 STD.	10,682
TOTAL	457,517		1,453,119
<u>WISCONSIN</u>			
MILWAUKEE JOURNAL X	471,883	12 STD.	1,415,649
TOTAL	471,883		1,415,649
GRAND TOTAL O.P.	15,229,445		44,208,581
<u>CANADA</u>			
WINNIPEG FREE PRESS	113,000	32 TAB.	452,000
LE SOLIEL	11,000	18 TAB.	249,777
VICTORIA DAILY COLONIST	51,000	12 TAB.	76,500
THE VANCOUVER PROVIDENCE	194,000	24 TAB.	582,000

AUGUST, 1955

READY PRINT SURVEY

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Q/Z PLANT

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>CANADA (CON'T)</u>			
CALGARY ALBERTAN	33,000	16 TAB.	66,000
THE WINDSOR STAR	74,000	12 TAB.	111,000
LA PATRIA MONTREAL	28,000	16 TAB.	56,000
SASKATOON STAR PHOENIX	36,000	8 TAB.	36,000
REGINA LEADER POST	45,000	8 TAB.	45,000
WINNIPEG TRIBUNE	70,000	16 TAB.	140,000
EDMONTON JOURNAL	89,000	4 STD.	89,000
OTTAWA	<u>57,500</u>		
TOTAL	344,000		<u>1,903,277</u>

GRAND TOTAL O.P. & CANADA

15,073,445

46,111,858

AUGUST, 1925

READY PRINT SURVEY
SOUTHERN COLOR

	CIRC.	TYPE SECTION	CIRC. IN 4's
<u>ALABAMA</u>			
ANNISTON STAR	17,801	8 STD.	35,602
TOTAL	17,801		35,602
<u>FLORIDA</u>			
TALLAHASSEE DEM.	13,706	8 STD.	27,412
WEST PALM BEACH POST TIMES	28,798	8 STD.	57,596
TOTAL	42,504		85,008
<u>GEORGIA</u>			
ALBANY HERALD	19,078	8 STD.	38,156
TOTAL	19,078		38,156
<u>NORTH CAROLINA</u>			
DURLINGTON TIMES NEWS	15,103	8 STD.	30,206
FAYETTEVILLE OBSERVER	23,123	8 STD.	46,226
GASTONIA GAZETTE	19,147	8 STD.	38,294
HIGH POINT ENTERPRISE	21,252	8 STD.	42,504
ROCKY MT. TELEGRAM	13,648	8 STD.	27,296
SALISBURY POST	17,070	8 STD.	34,140
TOTAL	109,343		218,666
<u>SOUTH CAROLINA</u>			
FLORENCE NEWS	14,140	8 STD.	28,280
TOTAL	14,140		28,280
<u>TENNESSEE</u>			
JOHNSON CITY PRESS	19,307	8 STD.	38,614
TOTAL	19,307		38,614
<u>VIRGINIA</u>			
PETERSBURG PROGRESS INDEX	16,694	8 STD.	33,388
TOTAL	16,694		33,388
GRAND TOTAL	238,867		477,714

AUGUST, 1955READY PRINT SURVEYWORLD COLOR

	CIRC.	SECTION	CIRC. IN 4's
<u>COLORADO</u>			
FORT COLLINS COLORADOAN	7,020	8 TAB.	7,020
TOTAL	7,020		7,020
<u>IDaho</u>			
TWIN FALLS TIMES NEWS	19,629	8 TAB.	19,629
TOTAL	19,629		19,629
<u>ILLINOIS</u>			
CARBONDALE SOUTHERN ILLINOISAN	17,729	8 STD.	35,458
CHAMPAIGN URBANA COURIER	24,827	8 STD.	49,654
DECATUR HERALD REVIEW	53,541	8 STD.	107,081
EAST ST. LOUIS JOURNAL	30,085	8 STD.	60,172
SPRINGFIELD SUNDAY JOURNAL	65,108	16 TAB.	130,216
TOTAL	191,291		382,581
<u>KANSAS</u>			
KANSAS CITY KANSAN	28,185	8 STD.	56,370
TOTAL	28,185		56,370
<u>LOUISIANA</u>			
BATON ROUGE ADVOCATE	43,353	12 STD.	130,059
TOTAL	43,353		130,059
<u>MISSOURI</u>			
SPRINGFIELD NEWS LEADER	57,309	8 STD.	114,618
TOTAL	57,309		114,618
<u>NEBRASKA</u>			
BEATRICE SUN	9,981	8 TAB.	9,981
GRAND ISLAND INDEPENDENT	18,741	8 TAB.	18,741
TOTAL	28,722		28,722

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AUGUST, 1955READY PRINT SURVEY

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WORLD COLOR

	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>OKLAHOMA</u>			
SHAWNEE STAR ✓	11,664	8 TAB.	11,664
TOTAL	11,664		11,664
<u>TEXAS</u>			
MEXIA NEWS ✓	2,896	8 TAB.	2,896
TOTAL	2,896		2,896
GRAND TOTAL	390,068		753,599

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AUGUST, 1955

READY PRINT TOTALS IN 4's

ACME

ARIZONA	511,105
ARKANSAS	72,797
CALIFORNIA	2,459,777
COLORADO	98,640
IDAHO	191,538
KANSAS	42,411
LOUISIANA	8,573
MISSISSIPPI	5,756
MONTANA	65,870
NEVADA	119,238
NEW MEXICO	179,697
OKLAHOMA	89,361
OREGON	21,978
TEXAS	1,011,926
UTAH	78,804
WYOMING	<u>44,246</u>
TOTAL	5,001,714

AUGUST, 1955

READY PRINT TOTALS IN 4'sBUFFALO COLOR

ALABAMA	86,387
COLORADO	3,385
FLORIDA	141,783
GEORGIA	5,982
ILLINOIS	1,231,823
INDIANA	780,532
IOWA	58,588
KANSAS	6,375
KENTUCKY	15,801
MISSISSIPPI	5,237
MONTANA	9,582
NEW JERSEY	53,734
NEW MEXICO	8,625
NEW YORK	43,318
NORTH CAROLINA	8,685
OHIO	375,516
OKLAHOMA	32,804
SOUTH DAKOTA	23,220
TENNESSEE	332,418
TEXAS	32,196
VIRGINIA	<u>21,762</u>
TOTAL	3,289,032

AUGUST, 1955

READY PRINT TOTALS IN 4'sEASTERN COLOR

CONNECTICUT	1,048,735
FLORIDA	9,325
MAINE	147,198
MASSACHUSETTS	863,280
NEW HAMPSHIRE	69,234
NEW JERSEY	829,425
NORTH CAROLINA	266,480
RHODE ISLAND	<u>447,662</u>
TOTAL	3,681,339

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AUGUST, 1955

READY PRINT TOTALS IN 4's

FORT WORTH

TEXAS

1,559,556

TOTAL

1,559,556

AUGUST, 1955READY PRINT TOTALS IN 4'sGREATER BUFFALO

ALABAMA	215,412
ARKANSAS	14,801
FLORIDA	350,957
GEORGIA	1,442,757
ILLINOIS	1,443,317
INDIANA	1,554,073
IOWA	292,815
KANSAS	2,700
KENTUCKY	623,224
LOUISIANA	5,399
MARYLAND	1,079,991
MASSACHUSETTS	1,481,640
MICHIGAN	3,246,000
MINNESOTA	610,904
MISSOURI	2,147,571
MONTANA	4,777
NORTH DAKOTA	122,112
NEW MEXICO	9,944
NEW YORK	3,949,963
NORTH CAROLINA	4,063
OHIO	4,455,180
PENNSYLVANIA	717,089
SOUTH DAKOTA	127,362
TENNESSEE	483,011
TEXAS	1,651,441

AUGUST, 1955READY PRINT TOTALS IN 4'sGREATER BUFFALO (CON'T)

VERMONT	12,842
WASHINGTON	18,200
WASHINGTON, D.C.	683,110
WISCONSIN	<u>92,819</u>
	26,843,474
CANADA	<u>1,954,850</u>
TOTAL	28,798,324

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AUGUST, 1955

READY PRINT TOTALS IN 4's

HEARST

CALIFORNIA	4,097,456
ILLINOIS	2,635,927
MARYLAND	1,445,141
MASSACHUSETTS	1,643,073
MICHIGAN	1,584,027
NEW YORK	3,379,971
TEXAS	493,500
WASHINGTON	923,408
WISCONSIN	<u>797,755</u>
TOTAL	17,00,258

READY PRINT TOTALS IN 4'sINTERNATIONAL COLOR PRINTING CO.

ALABAMA	925,324
ARKANSAS	263,467
COLORADO	18,806
FLORIDA	1,488,321
GEORGIA	718,186
IDAHO	15,000
ILLINOIS	655,471
INDIANA	254,502
IOWA	164,485
KANSAS	953,292
KENTUCKY	181,713
LOUISIANA	610,400
MAINE	309,000
MARYLAND	88,548
MASSACHUSETTS	124,084
MICHIGAN	316,000
MISSISSIPPI	457,889
MISSOURI	170,056
NEW JERSEY	1,025,506
NORTH DAKOTA	68,500
NEW MEXICO	7,309
NEW YORK	4,571,220
NORTH CAROLINA	1,247,298

AUGUST, 1955READY PRINT TOTALS IN 4'sINTERNATIONAL COLOR PRINTING CO.

OHIO	1,506,995
OKLAHOMA	581,032
PENNSYLVANIA	2,126,151
SOUTH CAROLINA	819,137
SOUTH DAKOTA	101,286
TENNESSEE	683,401
TEXAS	1,846,634
VIRGINIA	1,471,797
WASHINGTON	316,200
WASHINGTON, D.C.	2,115,000
WEST VIRGINIA	873,648
WISCONSIN	<u>162,000</u>
	27,237,658
SPANISH	546,000
STARS & STRIPES	<u>190,000</u>
TOTAL	27,973,658

AUGUST, 1955READY PRINT TOTALS IN 4'sQ'IN PLANT

ARKANSAS	215,158
CALIFORNIA	4,337,341
COLORADO	1,600,577
CONNECTICUT	118,220
FLORIDA	873,360
ILLINOIS	3,480,950
INDIANA	446,253
IOWA	1,302,380
KANSAS	8,509
KENTUCKY	23,412
LOUISIANA	1,005,401
MASSACHUSETTS	320,256
MINNESOTA	1,874,732
MISSISSIPPI	20,255
MISSOURI	1,436,083
MONTANA	157,520
NEBRASKA	931,617
NEW YORK	7,778,387
NORTH CAROLINA	69,014
OHIO	10,305
OKLAHOMA	863,051
OREGON	2,034,384
PENNSYLVANIA	10,662,358

AUGUST, 1955GRAND TOTAL TONNAGE IN 1955

PAGE 2

OWN PLANT

TENNESSEE	754,083
TEXAS	412,559
UTAH	534,350
VIRGINIA	87,200
WASHINGTON	1,435,119
WISCONSIN	<u>1,415,649</u>
TOTAL	44,208,581
CANADA	<u>1,903,277</u>
GRAND TOTAL	46,111,858

AUGUST, 1955READY PRINT TOTALS IN 4'sSOUTHERN COLOR

ALABAMA	35,602
FLORIDA	35,008
GEORGIA	38,156
NORTH CAROLINA	218,666
SOUTH CAROLINA	28,280
TENNESSEE	38,614
VIRGINIA	<u>33,388</u>
TOTAL	477,714

AUGUST, 1955

READY PRINT TOTALS IN 4'sWORLD COLOR

COLORADO	7,020
IDAHO	19,629
ILLINOIS	382,581
KANSAS	56,370
LOUISIANA	130,059
MISSOURI	114,618
NEBRASKA	28,722
OKLAHOMA	11,664
TEXAS	<u>2,896</u>
TOTAL	753,559

August, 1955

READY PRINT SUMMARY - CIRCULATION IN 4's

STATE	J.C.P.	G.B.P.	B.C.	ACE	F.C.	W.C.	S.C.	F.H.	HEARST.	O.P.
ALABAMA	925,324	215,412	85,387				35,602			
ARIZONA				511,105						
ARKANSAS	253,467	14,801		72,797						215,158
CALIFORNIA				2,459,777					4,097,456	4,337,341
COLORADO	18,806		3,385	98,640		7,020			1,600,979	
CONNECTICUT					1,048,735					118,220
DELAWARE										
FLORIDA	1,488,321	350,977	141,783		9,325		85,008			873,363
GEORGIA	718,186	1,442,757	5,982				38,156			
IDAH0	15,000			191,538		19,629				
ILLINOIS	655,471	1,443,317	1,231,823			382,581			2,635,927	3,480,950
INDIANA	254,502	1,554,073	780,532							466,253
IOWA	164,485	292,815	58,588							1,302,380
KANSAS	953,292	2,700	6,375	42,411		56,370				8,599
KENTUCKY	181,713	623,224	15,801							23,412
LOUISIANA	610,400	5,399		8,573		130,099				1,005,401
MAINE	309,000				147,198					
MARYLAND	88,548	1,079,991							1,445,141	
MASSACHUSETTS	124,064	1,481,640			863,280				1,643,073	349,399

1807

READY PRINT SUMMARY - CIRCULATION IN 4's

STATE	I.C.P.	O.B.P.	B.G.	ACH	F.C.	W.C.	S.C.	F.M.	HEARST	O.P.
ALABAMA	316,000	3,246,000							1,584,027	
MINNESOTA		610,904								1,874,732
MISSISSIPPI	457,889		5,237	5,756						20,255
MISSOURI	170,056	2,147,571				114,618				1,436,083
MONTANA		4,777	9,582	65,870						197,520
NEBRASKA						28,722				931,617
NEVADA				119,238						
NEW HAMPSHIRE					69,234					
NEW JERSEY	1,025,506		53,734		839,425					
NEW MEXICO	7,309	9,944	8,625	179,697						
NEW YORK	4,571,220	3,949,963	43,318							
NORTH CAROLINA	1,247,298	4,685	8,685		266,480		218,666		3,379,971	7,778,387
NORTH DAKOTA	68,500	122,112								69,014
OHIO	1,505,995	4,455,180	375,516							10,305
OKLAHOMA	581,032		32,804	89,351						863,051
OREGON				21,978		11,664				2,034,384
PENNSYLVANIA	2,125,151	717,089								10,662,358
RHODE ISLAND					447,662					
SOUTH CAROLINA	819,137						28,280			

AUGUST, 1955

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READY PRINT SUMMARY - CIRCULATION IN L's

STATE	I.C.P.	O.B.P.	B.C.	ACNE	E.C.	W.A.	S.C.	F.W.	HEARST	O.P.
SOUTH DAKOTA	101,285	127,352	23,220							
TENNESSEE	683,401	483,011	332,418				38,614			754,083
TEXAS	1,846,634	1,651,441	32,196	1,011,926		2,896		1,999,556	493,500	412,559
UTAH				78,804						534,350
VERMONT			12,842							
VIRGINIA	1,471,797		11,762					33,388		87,200
WASHINGTON	316,200		18,200						923,408	1,435,119
WASHINGTON, D.C.	2,115,000		683,110							
WEST VIRGINIA	873,648									
WISCONSIN	162,000	92,819							797,755	1,415,649
WYOMING				44,246						

TOTAL	27,237,658	26,843,474	3,289,032	5,001,714	3,681,339	753,559	477,714	1,999,556	17,000,298	44,208,581
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TOTAL	27,237,658	26,843,474
SPANISH	546,000	1,954,850
STARS & STRIPES	190,000	

O.B.P.

TOTAL	26,798,324
GRAND TOTAL	26,798,324

O.P.

TOTAL	44,208,581
CANADA	1,803,277
GRAND TOTAL	46,111,858

READY PRINT SURVEY
ALABAMA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ANNISTON STAR	S.C.	17,801	8 STD.	35,602
DOTHAN EAGLE	B.C.P.	21,178	8 STD.	42,356
FLORENCE TRI-CITY TIMES	B.C.P.	17,108	8 STD.	34,216
MOBILE PRESS REGISTER	G.B.P.	85,005	10 STD.	212,512
SELMA TIMES JOURNAL	B.C.P.	9,815	8 TAB.	9,815
TROY HERALD MESSENGER	NO COMIC SECTION	—	—	—
TALLADEGA DAILY HOME	G.B.P.	<u>± 2,900</u>	8 TAB.	<u>± 2,900</u>
SUB. TOTAL		153,807		337,401

L.G.P.

BIRMINGHAM NEWS		11,270	12 STD.	633,810
DECATUR DAILY		13,650	8 STD.	27,300
GADSDEN TIMES		21,895	8 STD.	43,790
HUNTSVILLE TIMES		18,704	8 STD.	37,408
MONTGOMERY ADV.		72,948	8 STD.	148,896
TUSCALOOSA NEWS		15,560	8 STD.	31,120
ANDALUSIA COVINGTON DISPATCH		<u>3,000</u>	8 TAB.	<u>3,000</u>
SUB TOTAL		157,027		925,324
GRAND TOTAL		310,834		1,262,725

READY PRINT SURVEY
ARKANSAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. 1943</u>
EL DONADO NEWS	ACME	9,973	16 TAB.	19,946
FORT SMITH TIMES REC.	THEIR OWN	31,280	8 TAB.	31,280
HELENA WEST HELENA WORLD	_____	_____	_____	_____
HOT SPRINGS SENT. REC.	ACME	13,280	16 TAB.	26,560
LITTLE ROCK ARK. DEM.	THEIR OWN	91,939	8 STD.	183,878
PINE BLUFF COMMERCIAL	G.B.P.	14,801	8 TAB.	14,801
TEXARKANA GAZETTE NEWS	ACME	<u>25,291</u>	8 TAB.	<u>25,291</u>
SUB TOTAL		187,564		302,756
	<u>L.C.P.</u>			
LITTLE ROCK ARK. GAZETTE		<u>105,387</u>	10 STD.	<u>262,467</u>
SUB TOTAL		105,387		262,467
GRAND TOTAL		292,951		565,223

NEWSPAPER SURVEY
FLORIDA

NAME	WHERE PRINTED	CIRC.	TYPE SECTION	CIRC. IN '40
DAYTONA BEACH NEWS JOURNAL	THEIR OWN	23,880	8 STD.	47,760
DELAND SUN NEWS	D.C.P.	4,663	8 TAB.	4,663
FORT LAUDERDALE NEWS SENT.	D.C.P.	24,406	8 STD.	48,812
FORT MYERS NEWS PRESS	D.C.P.	9,789	8 STD.	19,578
FORT PIERCE NEWS TRIBUNE	D.C.P.	6,411	8 TAB.	6,411
JACKSONVILLE TIMES UNION	THEIR OWN	148,535	12 STD.	445,605
MELBOURNE TIMES	G.D.P.	2,645	6 STD.	3,967
MIAMI NEWS	G.D.P.	97,541	14 STD.	341,358
MIAMI BEACH SUN	E.C.P.	9,325	8 TAB.	9,325
OCALA STAR BANNER	D.C.P.	7,057	8 TAB.	7,057
PANAMA CITY NEWS HERALD	D.C.P.	14,263	8 STD.	28,526
SARASOTA HERALD TRIBUNE	D.C.P.	13,388	8 STD.	26,776
SEALAND DEM.	S.C.	13,706	8 STD.	27,412
TAMPA TRIBUNE	THEIR OWN	125,666	12 STD.	379,998
WEST PALM BEACH POST TIMES	S.C.	23,798	8 STD.	57,596
ST. AUGUSTINE REC.	D.B.P.	5,632	4 STD.	5,632
SUB TOTAL		520,696		1,460,436
	J.C.P.			
BRADENTON HERALD		10,579	8 STD.	21,158
CLEARWATER SUN		1,914	8 STD.	19,828
GAINESVILLE SUN		1,496	4 STD.	10,496
LAKE LAND LEDGER		11,434	8 STD.	30,858
MIAMI HERALD		255,976	16 STD.	1,023,904
ORLANDO SENTINEL STAR		56,977	12 STD.	170,931
OSWEGO & JOURNAL NEWS		46,000	8 STD.	92,000
ST. PETERSBURG TIMES		21,568	12 STD.	178,704
SUB TOTAL		431,944		1,438,221
GRAND TOTAL		952,640		3,098,657

READY PRINT SURVEY
GEORGIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALBANY HERALD	S.C.	19,078	8 STD.	38,156
ATLANTA JOURNAL CON.	G.S.P.	180,919	12 STD.	1,442,797
GAINESVILLE TIMES	B.C.P.	5,982	8 TAB.	5,982
ROCK NEWS JOURNAL	CUNEO PRESS	<u>11,408</u>	8 TAB.	<u>11,408</u>
SUB TOTAL		17,387		1,498,303
	<u>I.C.P.</u>			
AUGUSTA CHRONICAL HERALD		61,235	16 STD.	244,940
COLUMBUS LEDGER INQUIRER		45,526		135,508
MACON TELEGRAPH NEWS		50,860		152,580
SAVANNAH NEWS PRESS		58,686		176,058
WAYCROSS JOURNAL		<u>2,000</u>	8 TAB.	<u>8,000</u>
SUB TOTAL		226,317		710,186
GRAND TOTAL		741,704		2,215,489

READY PRINT SURVEY
LOUISIANA

PAPER	WHERE PRINTED	CARR.	TYPE SECTION	CIRC. IN 4's
BATON ROUGE ADVOCATE	M.C.	43,353	12 STD.	130,059
BOCALUBA NEWS	G.D.P.	5,399	8 TAB.	5,399
NEW ORLEANS T. PICAYUNE	THEIR OWN	275,255	12 STD.	828,795
NEW ORLEANS STATES	THEIR OWN	88,803	8 STD.	176,506
OPLOUSAS WORLD	ACME	<u>8,573</u>	8 TAB.	<u>3,573</u>
SUB TOTAL		622,390		1,032,432

L.C.P.

LAKE CHARLES AMERICAN PRESS		22,699	8 STD.	45,398
MONROE WORLD		32,025	8 STD.	64,050
NEW ORLEANS ITEM		107,691	8 STD.	215,382
SHREVEPORT TIMES		<u>95,190</u>	12 STD.	<u>285,570</u>
SUB TOTAL		257,605		610,400
GRAND TOTAL		879,995		1,642,932

NEWSPRINT SURVEY
 MISSISSIPPI

PAPER	WHERE PRINTED	DATE	TYPE SECTION	Circ. in 4's
CORINTH CO RHYTHM	I.C.P.	5,237	8 TAB.	5,237
MERIDIAN STAR	THEIR OWN	20,255	4 STD.	20,255
NATCHEZ TIMES	AGUE	5,755	8 TAB.	5,755
SUB TOTAL		31,248		31,248
<u>I.C.P.</u>				
GREENVILLE DELTA DEM. TIMES		11,631	8 TAB.	11,631
NATCHEZ DEM.		5,558	8 TAB.	5,558
JACKSON STATE TIMES		45,000	8 STD.	90,000
TUPELO MISS. HERALD		12,500	8 STD.	25,000
VICKSBURG MISS. HERALD		9,700	8 TAB.	5,700
JACKSON CLARION LEDGER		79,000	16 STD.	216,000
SUB TOTAL		153,389		457,389
GRAND TOTAL		34,637		489,137

REALY PRINT SURVEY
NORTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
BURLINGTON TIMES NEWS	S.C.	15,103	8 STD.	30,206
CHARLOTTE NEWS	THEIR OWN	69,014	8 TAB.	69,014
CONCORD TRIBUNE	B.C.P.	8,685	8 TAB.	8,685
FAYETTEVILLE OBSERVER	S.C.P.	23,123	8 STD.	46,226
GASTONIA GAZETTE	S.C.P.	19,147	8 STD.	38,294
GREENSBORO NEWS	E.C.P.	38,830	12 STD.	266,480
HIGH POINT ENTERPRISE	S.C.P.	21,252	8 STD.	42,504
ROANOKE RAPIDS HERALD	G.B.P.	4,063	8 TAB.	4,063
ROCKY Mt. TELEGRAM	S.C.P.	13,648	8 STD.	27,296
SALISBURY POST	S.C.P.	<u>17,070</u>	8 STD.	<u>34,140</u>
SUB TOTAL		279,935		566,908
	<u>L.C.P.</u>			
ASHEVILLE CITIZEN TIMES		52,367	8 STD.	104,734
CHARLOTTE OBSERVER		116,180	12 STD.	438,540
DURHAM HERALD		38,801	8 STD.	73,602
ELIZABETH CITY ADVANCE		7,494	8 TAB.	7,494
HENDERSON DISPATCH		4,927	8 TAB.	4,927
KANNAPOLIS INDEPENDENT		10,359	8 STD.	20,718
RALEIGH NEWS & OBSERVER		139,607	10 STD.	324,017
RALEIGH TIMES		15,179	8 TAB.	15,179
WILMINGTON		38,250	8 STD.	56,500
WOREHEAD CITY		3,500	8 TAB.	3 500
WINSTON SALEM		<u>16,122</u>	12 STD.	<u>198,387</u>
SUB TOTAL		512,793		1,247,298
GRAND TOTAL		712,728		1,814,206

READY PRINT SURVEY
OKLAHOMA

PAPER	WHERE PRINTED	CARR.	TYPE SECTION	Circ. in 4's
ADA NEWS	D.C.P.	9,093	8 TAB.	9,093
BARTTTSVILLE EXAMINER	SOUTHWESTERN PRESS	9,492	8 TAB.	9,492
CHICKASAW EXPRESS	D.C.P.	6,135	8 TAB.	6,135
CLINTON NEWS	ACME	4,967	8 TAB.	4,967
CUSHING CITIZEN	ACME	4,398	8 TAB.	4,398
DUNCAN BANNER	ACME	9,431	16 TAB.	18,862
DURANT DEM.	ACME	6,653	8 TAB.	6,653
ELK CITY NEWS	ACME	4,888	8 TAB.	4,888
ENID NEWS	THEIR OWN	19,900	4 STD.	19,900
GUTHRIE LEADER	ACME	5,176	8 TAB.	5,176
GUYMON HERALD	ACME	3,346	8 TAB.	3,346
HENRYETTA FREE LANCE	THEIR OWN	3,996	8 TAB.	3,996
HOBART DEM. CHIEF				
LANTON CONSTITUTION PRESS	ACME	16,586	16 TAB.	33,136
MUSKOGEE TIMES DEM.	THEIR OWN	15,255	16 TAB.	30,510
NORMAN TRANSCRIPT	D.C.P.	6,363	8 TAB.	6,363
OKLAHOMA CITY OKLAHOMAN	THEIR OWN	264,993	12 STD.	793,779
OKMULGEE TIMES	FORT SMITH	6,997	8 TAB.	6,997
PONCA CITY NEWS	D.C.P.	11,213	8 TAB.	11,213
SAYRE HEADLIGHT JNL.	ACME	2,884	8 TAB.	2,884
SEMINOLE PRODUCER	ACME	5,051	8 TAB.	5,051
SHAWNEE STAR	W.C.	11,664	8 TAB.	11,664
STILLWATER NEWS PRESS	THEIR OWN	<u>7,387</u>	8 STD.	<u>14,774</u>
SUB TOTAL		435,470		1,013,279
	<u>D.C.P.</u>			
TULSA WORLD		145,253	16 STD.	581,032
SUB TOTAL		145,253		581,032
GRAND TOTAL		580,723		1,594,311

DAILY PRINT SURVEY
SOUTH CAROLINA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>Circ. in 4's</u>
FLORENCE NEWS	S.C.	14,140	8 STD.	28,280
SUB TOTAL		14,140		28,280
<u>I.C.P.</u>				
ANDERSON INDEPENDENT MAIL		42,170	8 STD.	84,340
CHARLESTON NEWS & COURIER		60,533	8 STD.	121,066
COLUMBIA STATE		83,108	12 STD.	249,324
GREENVILLE NEWS		78,845	12 STD.	236,535
ORANGEDURG TIMES & DEMO		5,796	8 STD.	11,556
SPARTANBURG HERALD JOURNAL		37,908	8 STD.	75,816
CHARLESTON EVENING POST		31,500	4 STD.	31,500
SUB TOTAL		299,862		819,137
GRAND TOTAL		314,002		847,417

READY PRINT SURVEY
TENNESSEE

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ELIZABETHAN STAR	B.C.P.	5,802	8 TAB.	5,302
JOHNSON CITY PRESS	S.C.	19,307	8 STD.	38,614
KNOXVILLE SENTINEL	B.C.P.	108,872	12 STD.	326,616
MEMPHIS COMMERCIAL APPEAL	THEIR OWN	251,361	12 STD.	754,083
MORRISTOWN GAZETTE MAIL	G.B.P.	4,661	8 TAB.	4,661
NASHVILLE TENNESSEAN	G.B.P.	<u>191,340</u>	10 STD.	<u>478,350</u>
SUB TOTAL		581,343		1,608,126
	<u>L.C.P.</u>			
BRISTOL HERALD		23,879	8 STD.	47,798
CHATTANOOGA TIMES		88,764	12 STD.	266,292
JACKSON SUN		15,130	8 STD.	30,260
KINGSPORT TIMES		30,561	12 STD.	61,683
KNOXVILLE JOURNAL		88,456	12 STD.	265,368
GREENVILLE DAILY SUN		<u>12,000</u>	4 STD.	<u>12,000</u>
SUB TOTAL		148,790		683,401
GRAND TOTAL		730,133		2,291,527

READY PRINT SURVEY
TEXAS

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
ALICE ECHO	ACME	5,491	8 TAB.	5,491
ARMILLO NEWS GLOBE	ACME	58,649	12 STD.	176,047
BEAUMONT ENTERPRICE	THEIR OWN	71,394	16 STD.	285,776
BIRMINGHAM FAVORITE	ACME	4,577	8 TAB.	4,577
BIRMINGHAM HERALD	D.C.P.	10,369	8 STD.	20,738
BRECKENRIDGE AMERICAN				
BRENNAN BANNER	ACME	5,578	8 TAB.	5,578
BROWNVILLE HERALD	ACME	13,000	16 TAB.	26,000
BROOKWOOD BULLETIN	ACME	9,040	8 TAB.	9,040
BRYAN EAGLE	NEA-CLEVELAND	6,900	8 TAB.	6,900
DALLAS NEWS	G.D.P.	197,563	12 STD.	592,689
DALLAS TIMES HERALD	FORT WORTH	154,564	16 STD.	658,256
DEL RIO NEWS HERALD	ACME	4,045	8 TAB.	4,045
EL PASO TIMES	ACME	67,886	16 STD.	271,544
FORT WORTH STAR TELEGRAM	THEIR OWN	125,325	16 STD.	901,300
GAINESVILLE REGISTER	ACME	5,300	8 TAB.	5,300
GALVESTON TRIBUNE	THEIR OWN	23,027	12 STD.	69,051
GLADWATER MIRROR	THEIR OWN	4,534	8 TAB.	4,534
GONZALES INQUIRER	ACME	2,654	8 TAB.	2,654
GREENVILLE HERALD	NEA-CLEVELAND	8,279	8 TAB.	8,279
HARLINGTON MORNING STAR	ACME	13,000	16 TAB.	26,000
HENDERSON NEWS	ACME	6,069	8 TAB.	6,069
HILLSBORO MIRROR	G.B.P.	4,534	8 TAB.	4,534
HOUSTON CHRONICLE	G.B.P.	119,427	12 STD.	658,281
JACKSONVILLE PROGRESS	ACME	4,689	8 TAB.	4,689
KERRVILLE TIMES	ACME	3,448	8 TAB.	3,448
LAMAR REPORTER	ACME	4,020	8 TAB.	4,020

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '49</u>
LAREDO TIMES	THEIR OWN	15,191	28 TAB.	53,168
LONGVIEW JOURNAL NEWS	ACME	18,784	16 TAB.	37,358
LUBBOCK AVAANCHIE	ACME	44,420	12 STD.	133,260
LUFKIN NEWS	ACME	6,933	8 TAB.	6,933
MALLEN EVENING MONITOR	ACME	11,000	16 TAB.	22,000
MEXIA NEWS	W.C.	2,896	8 TAB.	2,896
MIDLAND REPORTER TELEGRAM	ACME	12,642	8 STD.	25,284
ODESSA AMERICAN	ACME	22,237	16 TAB.	44,474
PALESTINE HERALD	ACME	7,490	8 TAB.	7,490
PAMPA NEWS	ACME	7,216	16 TAB.	14,432
PAMPA SPOKESMAN	D.C.P.	5,729	16 TAB.	11,458
PLAINVIEW HERALD	ACME	6,901	16 TAB.	13,802
SAN ANTONIO EXPRESS	G.B.P.	13,055	14 STD.	395,937
SHERMAN DEM.	ACME	13,136	16 TAB.	26,272
SULPHUR SPRINGS NEWS	ACME	3,206	8 TAB.	3,206
SWEETWATER REPORTER	ACME	6,234	8 TAB.	6,234
TAYLOR PRESS	ACME	6,385	8 TAB.	6,385
TEMPLE TELEGRAM	ACME	17,549	16 TAB.	35,098
TEXARKANA GAZETTE	ACME	26,291	16 TAB.	52,582
VERNON RECORD	ACME	5,823	8 TAB.	5,823
VICTORIA ADVOCATE	ACME	10,577	8 TAB.	10,577
WAXACHIE LIGHT	ACME	<u>6,000</u>	8 TAB.	<u>6,000</u>
SUB TOTAL		1,113,057		4,685,169

READY PRINT SURVEY
TEXAS (CONT)

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN 4's</u>
<u>L.C.P.</u>				
ABILENE REPORTER NEWS		35,802	8 STD.	73,604
AUSTIN AMERICAN STATESMAN		19,731	12 STD.	149,193
BIG SPRING HERALD		8,600	8 STD.	17,200
CORPUS CHRISTI CALLER TIMES		67,007	8 STD-4 STD.	201,000
DENISON HERALD		10,414	8 STD.	20,828
DETON REC. CHRONICLE		11,465	8 STD.	16,930
GREENVILLE BANNER		8,021	8 STD.	16,042
HOUSTON POST		235,000	12 STD.	675,000
KILGORE HERALD		6,258	8 TAB.	6,258
MARSHALL NEWS MESSENGER		11,756	8 STD.	23,512
MOUNT PLEASANT TIMES		3,000	8 TAB.	3,000
GRAND LEADER		6,379	8 STD.	12,758
PARIS NEWS		12,500	8 STD.	25,000
PORT ARTHUR NEWS		33,383	12 STD.	73,149
SAN ANGELO STANDARD TIMES		35,323	8 STD.	70,646
SNYDER NEWS TEXAS		6,233	8 STD.	12,466
TEXAS CITY SUN		5,031	8 STD.	10,062
TYLER COURIER TIMES		22,743	8 STD.	45,486
WACO TRIBUNE		18,000	12 STD.	144,000
WICHITA FALLS DAILY TIMES		52,000	8 STD.	104,000
WHEATFORD TEXAS BRAND		2,750	8 STD.	5,500
SAN ANTONIO LIGHT		<u>141,000</u>	8 TAB.	<u>141,000</u>
SUB TOTAL		605,496		1,846,634
GRAND TOTAL		2,178,553		6,531,803

READY PRINT SURVEY
VIRGINIA

<u>PAPER</u>	<u>WHERE PRINTED</u>	<u>CIRC.</u>	<u>TYPE SECTION</u>	<u>CIRC. IN '13</u>
PETERSBURG PROGRESS INDEX	S.C.P.	16,694	8 STD.	33,388
PULASKI SOUTHWEST TIMES	B.C.P.	4,853	8 TAB.	4,853
SUFFALK NEWS HERALD	B.C.P.	6,899	8 TAB.	6,899
NEWPORT NEWS PRESS	THEIR OWN	<u>43,600</u>	8 STD.	<u>87,200</u>
SUB TOTAL		72,056		132,350

L.C.P.

DANVILLE REGISTER		18,584	8 STD.	37,168
LYNCHBURG NEWS		22,720	8 STD.	45,440
MARTINSVILLE BULLETIN		8,393	8 STD.	16,786
NORFOLK VA. PILOT		140,000	12 STD.	420,000
RICHMOND TIMES DISPATCH		176,679	16 STD.	706,716
ROANOKE TIMES		80,195	10 STD.	225,487
FARMVILLE HERALD		4,200	4 STD.	4,200
NORFOLK LEADER DISPATCH		<u>16,000</u>	4 STD.	<u>16,000</u>
SUB TOTAL		466,771		1,471,797
GRAND TOTAL		538,827		1,604,147

ANALYSIS OF SUNDAY COMIC SUPPLEMENT MARKET IN TERMS OF 4 PAGE UNITS
PAGE 4 OF AFFADAVIT BY RAYMOND H. CARLSON FOR YEAR 1955
REVISED BY G.B.P. TO PROPERLY APPLY THE SAME FIGURES

	1 PER AFFADAVIT NO. 4'S	2 % MARKET	3 REVISED BY G.B.P. NO. 4'S	4 % MARKET	5 % OF TOTAL MARKET
ALL SUPPLEMENTS	132,001,003		130,092,585		100.0%
LESS:					
PRIVATE PLANTS			44,208,581		34.0%
COLOR COMIC PRINTERS			85,884,304	100.0%	66.0%
GREATER BUFFALO PRESS	70,799,032	100.0%			
INTERNATIONAL (KING)	28,798,324	40.6%	26,843,474	31.4%	20.8%
BUFFALO COLORPRESS (N.E.A.)	27,237,658	38.4%	27,237,658	31.7%	20.9%
EASTERN COLOR	3,289,032	4.6%	3,299,032	3.8%	2.5%
ACME COLORPRINT	3,601,379	5.2%	3,481,339	4.2%	2.8%
SOUTHERN COLORPRINT	5,001,850	7.1%	5,001,714	5.8%	3.8%
FORT WORTH	477,714	.7%	477,714	.6%	.4%
WORLD COLOR			1,999,556	1.9%	1.2%
HEARST			733,509	.9%	.6%
			17,000,258	19.7%	13.0%

COMMENT

COLUMN -3 DELETES 1,954,850 SECTIONS CHARGED TO G.B.P. IN COLUMN -1. THESE ARE CANADIAN NEWSPAPERS.

COLUMN -3 SHOWS HEARST PLANTS AS COLOR COMIC PRINTERS, FOR THE REASON THAT THE CHICAGO AMERICAN AND PITTSBURGH SUN-TELEGRAPH, BOTH NON-HEARST NEWSPAPERS, ARE PRINTED IN THE HEARST CHICAGO PLANT. THESE RUNS TOTAL 2,996,434 COPIES IN 4'S.

FURTHER HEARST PLANTS HAVING A SURPLUS CAPACITY OF 12,500 COPIES ARE CAPABLE OF HANDLING THIS OUTPUT FOR KING, A HEARST DIVISION.

COLUMN -5 IS THE CORRECT ANALYSIS, BECAUSE IT IS THE TOTAL MARKET, THE FUTURE POTENTIAL MARKET, AND THE ORIGINAL SOURCE OF THE INDUSTRY.

H. T. ROSE
OFFICIAL ASSESSOR
U. S. DISTRICT COURT

P-63 FOR IDENT.
P-63 IN EVID.
 H. T. ROEL
 OFFICIAL REPORTER
 U. S. DISTRICT COURT

NOVEMBER 26, 1956

MR. WALTER KOESSLER,
 GREATER BUFFALO PRESS INC.
 302 GROVE STREET,
 BUFFALO, NEW YORK

DEAR WALTER:

EACH YEAR, FOR THE PAST TEN OR FIFTEEN YEARS, WE HAVE BEEN PREPARING WHAT WE CALL A READYPRINT SURVEY TO DETERMINE WHAT WORK IS BEING DONE BY EACH OF OUR COMPETING PLANTS AND ALSO WHAT WORK IS STILL BEING DONE BY "OWN" PLANTS. WE GET OUR INFORMATION FROM VARIOUS SOURCES. FIRST OF ALL WE WRITE TO EVERY SUNDAY NEWSPAPER IN THE UNITED STATES, AND ALL SATURDAY PAPERS WHICH WE THINK MIGHT CARRY A SUPPLEMENT TO OBTAIN COPIES OF THEIR COLORED SUPPLEMENTS. WE ALSO ASK QUESTIONS AS TO WHERE THEIR SUPPLEMENTS ARE PRINTED.

ABOUT SIXTY PER CENT OF THE NEWSPAPERS ANSWER IMMEDIATELY GIVING FULL INFORMATION. ABOUT TWENTY PER CENT COME AROUND AFTER WE WRITE THE SECOND TIME AND A FINAL FEW PAPERS GIVE US NO INFORMATION WHATEVER. THEREFORE, THE SURVEY IS NOT ABSOLUTELY ACCURATE BUT I THINK CLOSE ENOUGH TO GIVE US A FAIRLY GOOD PICTURE OF HOW THINGS ARE GOING.

I DOUBT THAT IN "1955" OUR INFORMATION WAS AS COMPLETE AS IT MIGHT HAVE BEEN BECAUSE THE "1956" FIGURES SHOW THAT GREATER BUFFALO HAS AN INCREASE OF ABOUT TEN MILLION FOURS. THE ADDITIONAL WORK FROM BUFFALO COLOR AND WORLD COLOR ACCOUNTS FOR ABOUT FOUR MILLION OF THIS. THE OTHER FOUR MILLION DIFFERENCE MAY BE THE RESULT OF THE FACT THAT WE DID NOT HAVE ALL OF YOUR "1955" BUSINESS LISTED. ACME SHOW A GAIN OF 1,000,000 NOT INCLUDING OAKLAND AND SAN FRANCISCO, WHICH I BELIEVE ACME IS NOW DOING. THEREFORE, ACME'S BUSINESS IS AROUND 6,000,000 AS AGAINST 4,000,000 A FEW YEARS AGO. BUFFALO COLOR IS OUT OF THE PICTURE ENTIRELY. IN OUR SURVEY, FORT WORTH PRINTING SHOWS UP UNDER "OWN PLANT". THERE HAS BEEN LITTLE CHANGE AT EASTERN ACCORDING TO THE SURVEY FIGURES. WE HAVE GAINED ABOUT 1,000,000. WORLD COLOR HAS DROPPED APPROXIMATELY 700,000 AND SOUTHERN COLOR HAS PICKED UP ABOUT 200,000. WILMINGTON HAS PICKED UP 200,000. THE "OWN PLANT" TOTAL DROPPED FROM 65,000,000 TO 61,000,000.

THE TOTALS CANNOT BE ABSOLUTELY ACCURATE FOR THE REASON THAT SOMETIME NEWSPAPERS RUN 12-PAGES, SOMETIME 10-PAGES AND SOMETIME 16-PAGES. WE USE THE SECTION THAT IS SENT IN TO US AT THE TIME WE MAKE THE REQUEST.

BECAUSE OUR GREATEST OPPORTUNITY FOR GROWTH LIES WITH THE NEWSPAPERS NOT LISTED UNDER "OWN PLANT", I AM GOING TO ATTACH A LISTING SEPARATE FROM WHAT I HAVE ALREADY PUT INTO THE READY PRINT SURVEY (FOR THE PURPOSE OF CONVENIENCE).

WILL YOU PLEASE HAVE SOMEONE CHECK THIS BOOK OVER CAREFULLY AND LET US KNOW WHAT MAY BE FOUND REGARDING BUFFALO PRINTING.

1825

LTR. - MR. WALTER KOEBLER

-2-

NOVEMBER 26, 1956

BEST REGARDS.

SINCERELY YOURS,

JJG:MDL

JOSEPH J. GORMAN

P.S. I HAVE JUST NOTICED THAT WE HAVE SEATTLE POST INTELLIGENCER LISTED UNDER
AGNE - I DO NOT THINK THIS IS RIGHT AND I AM RECHECKING.

SUPPLEMENTS PRINTED IN "OWN PLANT":

ARKANSAS	LITTLE ROCK DEMOCRAT	181,200
CALIFORNIA	LOS ANGELES TIMES	2,443,500
	LOS ANGELES EXAMINER (H)	2,294,000
	SAN FRANCISCO EXAMINER (H)	1,750,000
	SANTA ROSA PRESS DEMOCRAT	59,000
	VALLEJO TIMES	42,600
COLORADO	DENVER POST	1,043,400
	ROCKY MOUNTAIN NEWS	960,000
	GRAND JUNCTION SENTINEL	15,000
	PUEBLO CHIEFTAIN STAR	72,800
CONNECTICUT	BRIDGEPORT HERALD	186,400
FLORIDA	DAYTONA BEACH NEWS JOURNAL	53,800
	JACKSONVILLE TIMES UNION	451,500
ILLINOIS	CHICAGO HERALD AMERICAN	2,800,000
	CHICAGO TRIBUNE	4,100,000
INDIANA	SOUTH BEND TRIBUNE	450,400 ??
IOWA	DES MOINES REGISTER TRIBUNE	1,048,000
KANSAS	GREAT BEND TRIBUNE	8,900
	PARSONS SUN	8,900
KENTUCKY	NONE	
LOUISIANA	NEW ORLEANS TIMES PICAYUNE	836,700
	NEW ORLEANS STATE	182,600
MARYLAND	BALTIMORE AMERICAN (H)	1,125,000
MASSACHUSETTS	BOSTON SUN ADVERTISER (H)	1,886,000
	SPRINGFIELD CITY REPUBLICAN	334,200
MICHIGAN	DETROIT TIMES (H)	1,826,650
MINNESOTA	MINNEAPOLIS STAR TRIBUNE	1,879,500
MISSISSIPPI	MERIDIAN STAR	20,400
MISSOURI	ST. LOUIS POST DISPATCH	1,401,000 (Roto)
MONTANA	BILLINGS GAZETTE	72,400
	MILES CITY STAR	33,800
NEBRASKA	LINCOLN JOURNAL STAR	153,000
	OMAHA HERALD	787,500
NEW MEXICO	SANTA FE, NEW MEXICAN	11,800
NEW YORK	NEW YORK JOURNAL AMERICAN (H)	3,700,000

NEW YORK (CONT'D)	NEW YORK SUNDAY NEWS	7,104,000
	ALBANY TIMES UNION (H)	407,400
OKLAHOMA	E. & I. D. NEWS	20,500
	MUSKOGEE TIMES DEMOCRAT	30,800
	OKLAHOMA CITY OKLAHOMAN	792,000
OREGON	EUGENE REGISTER	65,200
	PORTLAND OREGONIAN	594,200
	PORTLAND JOURNAL	621,200
PENNSYLVANIA	PHILADELPHIA BULLETIN	2,484,300
	PHILADELPHIA ENQUIRER	4,477,800
	PITTSBURGH PRESS	1,923,600
	PITTSBURGH SUN TELEGRAPH (H)	1,575,000
TENNESSEE	MEMPHIS COMMERCIAL APPEAL	768,000
TEXAS	BEAUMONT ENTERPRISE	292,000
	GALVESTON DAILY NEWS	70,200
	LAREDO TIMES	61,200
	SAN ANTONIO LIGHT (H)	507,500
UTAH	SALT LAKE CITY TRIBUNE	531,600
WASHINGTON	BELLINGHAM HERALD	20,800
	SEATTLE TIMES	963,000
	SPOKANE SPOKEMAN	432,900
	WALA WALA UNION BULLETIN	16,100
	SEATTLE POST INTELLIGENCER (H)	910,000
WISCONSIN	MILWAUKEE JOURNAL	1,431,900
	MILWAUKEE SENTINEL (H)	791,700
CANADA	WINNIPEG FREE PRESS	459,600
	LE SOLEIL	333,000
	VICTORIA DAILY COLONIST	65,600
	VANCOUVER	569,700
	WINDSOR STAR	109,650
	SASKATOON STAR	73,800
	REGINA LEADER POST	45,700
	WINNIPEG UNION	143,200
	EDMONTON JOURNAL	185,800

(H) - REPRESENTS HEARST PLANT.

11/1/56

2195

PAPERS PRINTED BY INTERNATIONAL COLOR PRINTING

Wilkes Barre

Akron, Ohio, Beacon Journal
 Anderson, S.C., Independent
 Ashland, Ky., Independent
 Asheville, N.C., Citizen Times
 Athens, Ohio, Messenger
 Augusta, Ga., Chronicle
 Austin, Texas, Statesman
 Beckley, W. Va., Register
 Binghamton, N.Y., Press
 Birmingham, Ala., News
 Bluefield, W. Va., Telegraph
 Bradenton, Fla., Herald
 Bristol, Va., Herald Courier
 Canton, Ohio, Repository
 Charleston, J. Va., Gazette
 Charleston, W. Va., Mail
 Charleston, S. C., Evening Post
 Charleston, S. C., News & Courier
 Charlotte, N.C., Observer
 Chattanooga, Tenn., Times
 Clarksburg, W. Va., Exponent Telegram
 Clearwater, Fla., Sun
 Columbia, S. C., State
 Columbus, Ga., Ledger Enquirer
 Cumberland, Md., Times
 Danville, Va., Register
 Dayton, Ohio, News
 Decatur, Ala., Daily News
 Denton, Texas, Record Chronicle
 Durham, N.C., Herald
 Detroit Mich., Polish Ely News
 Elizabeth City, N.C., Advance
 Elizabethton, Tenn., Star
 Fairmont, W. Va., Times
 Farmville, Va., Herald
 Gadsden, Ala., Times
 Garden City, N.Y., Newsday
 Greenville, Tenn., Sun
 Greenville, S. C., News
 Harrisburg Patriot News
 Henderson, N.C., Dispatch
 Hereford, Texas, Brand
 Huntington, W. Va., Herald Adv.
 Huntsville, Ala., Times
 Ironton, Ohio, Tribune
 Jackson, Miss., State Times
 Jackson, Tenn., Sun
 Jamaica, N.Y., Press
 Kannapolis, N.C., Independent
 Kingsport, Tenn., Times
 Knoxville, Tenn., Journal
 Lake Charles, La., Amer. Press
 Las Cruces, N.M., Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio, News
 Lynchburg, Va., News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga., Telegraph
 Marion, Ind., Tribune
 Martinsville, Va., Bulletin
 McKeesport, Pa., Daily Advance
 Miami, Fla., Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Morehead City, N.C., News Times
 Middletown, N.Y., Record
 Newark, N. J., Ledger
 New Bedford, Mass., Std. Times
 Norfolk Va., Pilot
 Orlando, Fla., Sentinel
 Palaski, Va., S. W. Times
 Parkersburg, W. Va., News
 Portsmouth Times
 Philadelphia, Pa., Mayfair Times
 Pittsburgh, Pa., Sun-Telegraph
 Port Arthur, Texas News
 Portland, Maine, Telegram
 Raleigh, N.C., News & Observer
 Raleigh, N.C., Times
 Reading, Penna., Eagle
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times
 Rome, A., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartanburg, S. C., Herald
 St. Petersburg, Fla., Times
 Trenton, N. J., Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C., Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Was., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa., Independent
 Wilmington, N.C., Star News
 Winston Salem, N.C., Journal
 SPANISH
 Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El Pais
 Havana, Excelsoior
 Havana, El Munco
 Havana, Informacion
 Venezuela, El. National, Sun, Tribune
 Venezuela, La. Esfera
 San Juan, El Mundo
 Panama City American (Printed in English)
 Tampico, Mexico
 Caracas, Venezuela, Printed in English

11/1/56 2198

PAPERS PRINTED BY INTERNATIONAL COLOR PRINTING

Wilkes Barre

Akron, Ohio, Beacon Journal
 Anderson, S.C. Independent
 Ashland, Ky., Independent
 Asheville, N.C. Citizen Times
 Athens, Ohio, Messenger
 Augusta, Ga., Chronicle
 Austin, Texas, Statesman
 Beckley, W. Va., Register
 Binghamton, N.Y. Press
 Birmingham, Ala., News
 Blackfield, N. Va., Telegraph
 Bradenton, Fla., Herald
 Bristol, Va. Herald Courier
 Canton, Ohio, Repository
 Charleston, J. Va., Gazette
 Charleston, N. Va., Mail
 Charleston, S. C. Evening Post
 Charleston, S. C. News & Courier
 Charlotte, N.C. Observer
 Chattanooga, Tenn. Times
 Clarksburg, W. Va. Exponent Telegraph
 Clearwater, Fla., Sun
 Columbia, S. C. State
 Columbus, Ga. Ledger Enquirer
 Cumberland, Md. Times
 Danville, Va. Register
 Dayton, Ohio, News
 Decatur, Ala., Daily News
 Denton, Texas, Record Chronicle
 Durham, N.C. Herald
 Detroit Mich., Polish Dly News
 Elizabeth City, N.C. Advance
 Elizabethton, Tenn., Star
 Fairmont, W. Va., Times
 Fairville, Va. Herald
 Gadsden, Ala., Times
 Garden City, N.Y. Newsday
 Greenville, Tenn., Sun
 Greenville, S. C. News
 Harrisburg Patriot News
 Henderson, N.C. Dispatch
 Hereford, Texas, Brand
 Huntington, W. V., Herald Adv.
 Huntsville, Ala., Times
 Ireton, Ohio, Tribune
 Jackson, Miss., State Times
 Jackson, Tenn., Sun
 Janice, N.Y. Press
 Keokuk, N.C. Independent
 Kingsport, Tenn., Times
 Knoxville, Tenn. Journal
 Lake Charles, La., Amer. Press
 Las Cruces, N.M. Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio News
 Lynchburg, Va. News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga. Telegraph
 Marion, Ind., Tribune
 Martinsville, Va. Bulletin
 McKeesport, Pa., Daily Advance
 Miami, Fla. Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Norehead City, N.C. News Times
 Middletown, N.Y. Record
 Newark, N. J. Ledger
 New Bedford, Mass. Std. Times
 Norfolk Va., Pilot
 Orlando, Fla., Sentinel
 Pulaski, Va., S. W. Times
 Parkersburg, W. Va. News
 Portsmouth Times
 Philadelphia, Pa. Nayfair Times
 Pittsburgh, Pa. Sun-Telegraph
 Port Arthur, Texas News
 Portland, Maine, Telegram
 Raleigh, N.C. News & Observer
 Raleigh, N.C. Times
 Reading, Penna., Eagle
 Richmond, Va. Times Dispatch
 Roanoke, Va. Times
 Rome, A., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartanburg, S. C. Herald
 St. Petersburg, Fla. Times
 Trenton, N. J. Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C. Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Wash., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa. Independent
 Wilmington, N.C. Star News
 Winston Salem, N.C. Journal
 SPANISH
 Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El Pais
 Havana Excelsior
 Havana El Mundo
 Havana Informacion
 Venezuela, El Nacional, Sun. Tribune
 Venezuela, La Esfera
 San Juan, El Mundo
 Panama City American (Printed in English)
 Tepic, Mexico
 Caracas, Venezuela, Printed in English

1830

October 11, 1956

724 FOR IDENT.
B-64 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

Mr. E. R. McDowell
Publisher
The Lima News
Lima, Ohio

Dear Mr. McDowell:

Our newsprint supply at this time does not permit our presenting a proposal on printing the comics for the Lima News.

Thank you for calling upon us and I trust we may have such an opportunity at some later date.

Very truly yours,

J. W. Koessler,
President

JWK:bv

Betty mail this to
FD Licht.
King Features Syndicate
235 East 45th Street
New York N.Y.

P-65 FOR IDENT.
IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

October 2, 1936

TO: Mr. F. J. Nicht

FROM: R. K. Rogers

Dear Mr. Nicht:

We have a cancellation from the Lima, O. NEWS on their readyprint arrangement with us. I checked but find nothing to indicate either on our records or through the Greater Buffalo printing schedules that the NEWS also receives an NEA section. Lima is owned by Mr. Hoiles and Clarence tells me other papers in the chain have sections printed in Greater Buffalo Press's plant. Whether these are NEA printings or direct arrangements with Greater Buffalo we do not know.

The important point at this juncture is to take some precautionary action with Mr. Koessler to avoid him giving a price to Lima which might result in our losing the business.

Sincerely,

R. K. Rogers

RKR:IF

MEMORANDUM

May 10, 1933

The following points should be incorporated in the proposed selling contract with GBP:

1. It must be contingent on our proposed new ICP contract.
2. We must be exclusive sales agents.
3. Greater Buffalo is to retain all accounts they deal with directly and in effect on the date of our contract.
4. KFS is to retain all of its direct business.
5. All current KFP billings against KFS are to continue without change. This can be covered by schedules attached to the contract or contracts.
6. The contract should call for a definite rate per thousand fairs, to be revised up or down if necessary in order to conform with the character of the run or runs.
7. The contract should be for a 5 or 10 year period with one year's advance cancellation notice.
8. We should have an understanding concerning any increases in rate which involve something more than actual coverage of increased production expense. This, of course, should apply to only GBP business.
9. All negotiations for new business such as Oklahoma City, New Orleans, Jacksonville, etc., should be conducted exclusively by KFS.
10. There should be some kind of an understanding regarding the establishing of new printing stations. Lufkin and Coosa River are probably taken care of, but what about a Pacific Coast plant.
11. GBP should print newspaper supplements exclusively for us. We need not be interested in commercial work.
12. Should we have an understanding regarding the acquisition of other plants?
13. All contracts for new business should be in the name of KFS, Buffalo to charge us a fixed amount for printing new business.
14. Should there be an understanding regarding the printing of any Hearst newspaper comic supplements?

15. Who will we deal with under the new setup, Gorman or Kossaler, or both? Maybe that will take care of itself.
16. Try to have an understanding that KFS can make arrangements with other printers in the event they can do better for us because of geographical locations, than JBP.
17. We should be protected on any of our special service billing such as combinations.
18. Be sure to try to include clause in our contracts with LCP and G&P regarding a sale of the company. The clause should specify we would have an option to buy or be given a preference over others.

THIS AGREEMENT between GREATER BUFFALO PRESS INC., a New York Corporation, hereinafter called the "Press," and KING FEATURES SYNDICATE, a division of The Hearst Corporation, a Delaware Corporation, hereinafter called the "Syndicate."

WITNESSETH THAT:

WHEREAS Press is in the business of printing four color newspaper comic sections, herein referred to as color supplement.

NOW THEREFORE the parties agree as follows:

1. Press appoints Syndicate sales agent in the field of color supplement printing. However if Press makes direct sales, Press will pay to Syndicate

(a) with respect to all sales by Press to the accounts listed in Schedule A, commissions at the rates specified in Schedule A, and

(b) with respect to any new sale by Press to an account not listed in Schedule A (except sales to Scripps Howard Newspapers and affiliated companies and sales of the publication known as Weekend,) and present accounts of the Papert Newspaper Group a commission of fifty cents a thousand.

2. All sales by Syndicate shall be made in the name of Syndicate at prices determined by Syndicate and

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13-72 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U.S. DISTRICT COURT

billed directly by Syndicate which shall pay Press at the rates specified in Schedule B and shall be entitled to retain as its commission any excess over such rates. The rates specified in Schedule B may be increased or decreased in accordance with and in proportion to increased or decreased labor rates or material or service costs. The Press agrees to sell its printing services to new accounts at no lower prices than those listed in Schedule B plus 50¢ per thousand.

3. Press will send to Syndicate duplicate invoices on all such new accounts sold by Press directly and not through Syndicate.

The word "new" in paragraphs 1B, 2 and 3 is defined as accounts not presently held by Greater Buffalo Press Inc.

4. Press agrees not to solicit or contact any accounts which Press or its affiliated company or companies is printing for Syndicate.

5. Syndicate agrees to place a combined total of 75% of Syndicate's supplement printing requirements as of the effective date of this contract (but not more than 75% of its supplement printing requirements at the time) either with Press or with International Color Printing Co. of Wilkes Barre, Pennsylvania, or both.

6. All supplement pages ordered by Syndicate will be printed with four colors or less if so designated by Syndicate.

7. The parties hereto shall be excused from total or partial performance hereunder because of and for the duration of strikes, fire damage, accidents, acts of God, unavailability

of transportation facilities, shortage of newsprint, or other causes beyond their control whether or not of the same class or character making performance or partial performance hereunder impossible.

8. Press will package the supplements ordered by Syndicate for its accounts in kraft paper or on skids as specified by Syndicate which will pay the return freight charges on the skids.

9. Syndicate will supply or cause to be supplied to Press the necessary matrices for the printing of comic supplements ordered by Syndicate. Press will print supplements in a proper and workmanlike manner satisfactory to Syndicate and will start printing as soon as practicable after receipt of matrices for such printing. Syndicate will determine the pages composing makereadies, and Press will print comic pages and advertising pages comprising supplements only in accordance with instructions received from Syndicate. Press will deliver the supplements to a carrier designated or approved by Syndicate at the place of printing appropriately directed and sufficiently in advance of release date, as practicalities such as arrival of mats, mechanical difficulties and desires of the account will allow, to permit time of arrival as designated by Syndicate, in no event later than six days prior to publication date. Press will not permit work on orders not booked by Syndicate to delay or affect the completion of orders from Syndicate accounts.

10. In the event Press shall offer any or all of

its printing plants for sale Press agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer Press shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If Press desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as Press lowers its price or alters its terms from the original offer.

11. In the event International Color Printing Company of Wilkes-Barre, Pennsylvania, discontinues the operation of any of its plants, Press agrees to print any supplements printed for Syndicate or any of its customers at any such plant before the discontinuance of the operation of such plant and not thereafter printed at other plants of International Color Printing Company at a price which will result in Syndicate paying no more to Press, printing and transportation included, than the amount paid to International Color Printing Company for printing such supplements at the

time of such discontinuance of the operation of such plant.

12. This agreement shall run from December 1, 1957 to November 30, 1967 and thereafter for successive periods of five years each unless terminated by written notice given by either party to the other to be effective as of November 30, 1967 or as of the end of any such five year period and delivered two years prior to the date as of which it is to be effective.

13. This agreement shall bind the successors and assigns of the parties hereto.

like 14. This contract shall be effective *May 5*
1958.....

IN WITNESS WHEREOF Greater Buffalo Press Inc. has caused this agreement to be executed by its President, and King Features Syndicate division of The Hearst Corporation by Frank J. Nicht, its General Sales Manager.

GREATER BUFFALO PRESS INC.

By *W. K. Kinsler*
 President

KING FEATURES SYNDICATE
 Division of The Hearst
 Corporation

By *Frank J. Nicht*
 General Sales Manager

George C. Dineen

SCHEDULE "A"

The Dallas News 50¢ per M
The Houston Chronicle 50¢ per M
The San Antonio Express 50¢ per M
The New Orleans Times Picayune 50¢ per M
The New Orleans States 50¢ per M
The Shreveport Times 50¢ per M
The Monroe World 50¢ per M
The Waterloo Courier \$1.00 per M
The Elmira Telegram 50¢ per M
The Wichita Falls Times 50¢ per M
The Harte Hanks Newspapers 50¢ per M
The Calgary Herald 83¢ per M

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approx-
imately 14 1/2 by 21 1/2 inches; 1957 labor rates; 32 pound weight
newsprint at \$233.50 per ton; A.W.F.A. inks, standard colors;
individual, not cumulative, runs of the quantities specified;
prices f.o.b. plants of the "Press"

[illegible]

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approximately 14 $\frac{1}{2}$ by 21 $\frac{1}{2}$ inches; 1957 Labor rates; 32-pound weight newsprint at \$133.50 per ton; A.M.P.A. inks, standard colors; 50,000 copies or under, makeready cost page change \$29.50; one-third page change \$10.00; one-half page change \$15.00; four color heading change \$10.00; black heading change \$5.00; prices f.o.b. plants of the "Press"; individual, not cumulative, runs of the quantities specified.

	ITEM	PER M RUNNING RATE
Plates- Makeready--	Total	
Plates & Makeready--	per M	Above
Paper	M	3.31
Ink	M	.40
Press	M	1.18
Wrap & Ship	M	.18
Total	M	5.07

SCHEDULE "B"

Specifications: 4-page standard; 4 colors; page size approximately 14 1/2 by 21 1/2 inches; 1957 Labor Rates; 32-pound weight newsprint at \$133.50 per ton; A.M.P.A. inks, standard colors; 50,000 copies or under, makeready cost page change \$29.50; one-third page change \$10.00; one-half page change \$15.00; four color heading change \$10.00; black heading change \$5.00; prices f.o.b. plants of the "Press"; individual, not cumulative, runs of the quantities specified.

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Plates- Makeready--	Total	
Plates & Makeready--	per M	Above
Paper	M	3.31
Ink	M	.40
Press	M	1.18
Wrap & Ship	M	.18
	Total	M
		5.07

P-17 FOR IDEN
IN EVID.

H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

February 26, 1958

NOTES REGARDING GREATER BUFFALO PRESS

Letter June 13, 1955, Koessler to F. J. Nicht set forth points of agreement to be included in contract between King and GBP. King to be granted exclusive sales rights on all new business except Philadelphia BULLETIN, Des Moines REGISTER TRIBUNE, Oklahoma City OKLAHOMAN and the Papert group.

Based on above letter KPS drafted a contract which Koessler approved. Fourth Clause read, "Buffalo agrees that during the term of this contract it will not solicit, produce, or print comic supplements for any organization other than the Syndicate; that the Syndicate shall be Buffalo's exclusive sales agent; and that the Syndicate shall utilize the contracts of King Features Syndicate in formalizing client printing commitments. Exceptions are the following upon which Buffalo retains exclusive sales rights:" The above listed exceptions were repeated.

Koessler letter June 13, 1955, also stipulated "for the period of this contract, the Greater Buffalo Press, Inc. will contract to print newspaper supplements only for such accounts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement and for King Features Syndicate."

we bill GBP each week for the following runs in the amounts indicated:

Harte-Hanks Newspapers

San Angelo.....	50¢ per M
Abilene.....	" " "
Big Springs.....	" " "
Snyder.....	" " "
Denison.....	" " "
Marshall.....	" " "
Paris.....	" " "
Greenville.....	" " "
Corpus Christi.....	" " "
Elmira Star-Gazette.....	50¢ per M
Shreveport Times.....	" " "
Wichita Falls Record-News..	" " "
New Orleans States.....	" " "
New Orleans Times-Picayune..	" " "
Calgary Herald.....	83¢ per M
Monroe News Herald.....	50¢ per M
Waterloo Courier.....	\$1.00 per M

Total revenue on above as of this date.....\$563.40

1/21/61 H
202

THEIR OWN PICTORIAL REVIEW.

I HAVE NOT ATTEMPTED TO WORK OUT ANY COST IN CONNECTION WITH THESE PRINTINGS BUT LIST BELOW PRODUCTION INFORMATION WHICH WOULD BE NECESSARY TO ESTIMATE COST.

PUSH: 14-PAGE STANDARDS AS PRINTED IN CHICAGO GILSON PLANT

<u>NAME OF PAPER</u>	<u>CIRCULATION</u>	<u>CIRCULATION AD</u>	<u>PRESS HOURS</u>	<u>S.W. PRESS HOURS</u>	<u>NET</u>
ALBANY, N.Y., TIMES UNION	120,000	420,000	9	36	11,667
BALTIMORE, MD., AMERICAN	365,000	1,137,500	18.25	73	15,582
BOSTON, MASS., ADVERTISER	570,000	1,995,000	29.5	118	16,907
CHICAGO, ILL., AMERICAN	810,000	2,835,000	40.5	162	17,500
DETROIT, MICH., TIMES	550,000	1,925,000	28.5	114	16,886
ELKHART, IND., SENTINEL	250,000	875,000	15	60	14,583
NEW YORK, N.Y., J. AMERICAN	900,000	3,150,000	44.5	178	17,697
PITTSBURGH, PA., SUN-TELEGRAPH	485,000	1,697,500	25.5	102	16,642
SAN ANTONIO, TEX., LIGHT	<u>165,000</u>	<u>507,500</u>	<u>10</u>	<u>40</u>	<u>12,688</u>
	4,155,000	14,542,500	220.75	883	16,470

PUSH: 14-PAGE STANDARDS AS PRINTED IN SAN FRANCISCO PLANT

LOS ANGELES, CALIF., EXAMINER	700,000	2,450,000	35.5	142	17,254
SAN FRANCISCO, CALIF., EXAMINER	525,000	1,837,500	27.5	110	16,705
SEATTLE, WASH., POST INTELLIGENCE	<u>250,000</u>	<u>800,000</u>	<u>16.25</u>	<u>65</u>	<u>15,977</u>
	1,505,000	5,267,500	79.25	317	16,617

SATURDAY HOME COMICS

CHICAGO, ILL., AMERICAN	450,000	900,000	22	44	20,455
NEW YORK, N.Y., J. AMERICAN	<u>450,000</u>	<u>900,000</u>	<u>22</u>	<u>44</u>	<u>20,455</u>
	900,000	1,800,000	44	88	20,455

SO THAT AS MUCH INFORMATION AS POSSIBLE CAN BE PUT TOGETHER AT THIS

TIME, I AM MAKING COPIES, AND OFFERING MEMBERS AN ADDITIONAL \$10.00 YOU PAY OUT 2486 -

BOOK 6, 1935 COVERING STANDARDS OF PACE ESTABLISHED FROM 1914 TO 1935

1846

SAN FRANCISCO.

I WILL GO NO FURTHER THAN WORKING OUT PRICES ON THE ABOVE PRINTINGS
UNTIL YOU ADVISE HOW YOU WOULD WITH US TO PROCEED.

JOE CLINTON

KL

3/6/53

Pack - The Comic WeeklyTRANSPORTATION OF SUPPLEMENTS-CURRENT DATA
AS OF MARCH 1, 1953PRINTED AT CHICAGO

DISTRIBUTING UNIT	TYPE OF TRANSP. SERVICE USED	CARRIER	RATE PER CWT		MINIMUM	PACKAGING
			BASIC	INCL. SURCHARGE AND % TAX		
ALBANY	BAGGAGE	N.Y.C.	.99	\$1.01970	5,000	BUNDLES
BALTIMORE	FREIGHT	B & O	.70	.82915 (F)	60,000	BUNDLES
BOSTON	FREIGHT	ERIC & NEW HAVEN	.76	.90022 (F)	60,000	BUNDLES
CHICAGO	TRUCK	HERALD - AMERICAN	.12 AVER.	.12 AVER.	-0-	SKIDS
DETROIT	TRUCK	LIBERTY OR INTERSTATE	.47	.48410	20,000	SKIDS
BILMORER	TRUCK	CO-ORDINATED	.28	.28810	20,000	1/2 ON SKIDS; 1/2 BUNDLES
NEW YORK	FREIGHT	NYC OR B & O	.76	.90022 (F)	60,000	BUNDLES
PITTSBURGH	BAGGAGE	B & O	.55	.56650	5,000	BUNDLES
SAN ANTONIO	BAGGAGE	R.I.-N.Y., To, OR R.I. - NYPAC.	1.66 (F)	1.70980	20,000	BUNDLES

PRINTED AT SAN FRANCISCO PLANT:

LOS ANGELES	TRUCK	HILLS TRANSP.	.49	.50470	40,000	BUNDLES
SAN FRANCISCO	TRUCK	EXAMINER	.12	.12	-0-	2/3 SKIDS 1/3 BUNDLES
SEATTLE	FREIGHT	S.P.-U.P. OR S.P.-N.P.	.78	.92391 (F)	50,000	BUNDLES

NOTES: (F) INCLUDES 15% SURCHARGE

(W) NEW RATE OF \$1.05 (SUBJECT TO 15% SURCHARGE ON 3% TAX-TOTAL \$1.243725 PER CWT)
APPLIED FOR, NOW BEING CONSIDERED BY CARRIERS. THIS RATE WOULD BE ON A 40,000
LB. MINIMUM.

CALLING WEEKLY - SAN FRANCISCO PLANT

ESTIMATED COST OF PRODUCING 12, 14 OR 16 PAGE COMIC SECTION
FOR THE PORTLAND OREGONIAN.....
ALL STEREOTYPE - SELF-HARD PACKING - 5/8" NEWSPRINT...
PUBLISHER OR ADVERTISER FURNISHES MATS....
PRESS RUN 300,000 COPIES.

<u>PLUS-COSTS</u> (F.O.B. SAN FRANCISCO)	<u>12 PAGE</u>	<u>14 PAGE</u>	<u>16 PAGE</u>
STEREOTYPE PLATES (6 \$4.00 EACH)	\$ 384.00	\$ 448.00	\$ 512.00
COLOR PRESS PAYROLL	1,083.47	1,387.97	1,387.97
COLOR PRESS EXPENSE	22.50	26.25	30.00
NEWSPRINT HANDLERS' PAYROLL-PRESSROOM	30.00	30.00	30.00
NEWSPRINT HANDLERS EXPENSE-PIER TO PLANT	33.75	39.38	45.00
NEWSPRINT	2,738.61	3,195.05	3,651.48
INK	339.00	346.00	453.00
PAINTROOM PAYROLL	180.00	180.00	180.00
PAINTROOM EXPENSE	17.00	20.00	21.00
LOADING SUPPLEMENTS IN FREIGHT CAR	40.00	40.00	40.00
LIGHT, POWER, GAS, HEAT, WATER	15.00	20.00	20.00
NEWSPRINT STORAGE AND DEMURRAGE	3.00	3.00	3.00
INSURANCE-COMPENSATION & PAYROLL TAXES (3.1%)	53.24	64.67	66.65
ESTIMATED TOTAL PLUS-COST PER ISSUE	<u>\$6,521.97</u>	<u>\$7,850.32</u>	<u>\$8,440.10</u>

OTHER CHARGES (SHARE OF FIXED COSTS - NOT ADDED COSTS)

ADMINISTRATIVE PAYROLL	\$ 24.09	\$ 28.10	\$ 32.12
FINANCIAL AND ACCOUNTING PAYROLL	17.37	20.27	23.16
JOURNALISTS PAYROLL	48.31	56.36	64.41
BUILDING SERVICE PAYROLL	45.51	53.09	60.68
ADMINISTRATIVE EXPENSE	6.51	7.60	8.68
FINANCIAL AND ACCOUNTING EXPENSE	.96	1.12	1.28
JOURNALISTS EXPENSE	2.51	2.92	3.34
ELECTRICIAN'S EXPENSE	21.52	25.11	28.70
BUILDING SERVICE EXPENSE	30.00	35.01	40.01
TELEPHONE EXPENSE	8.72	10.17	11.63
TRUCKAGE RENTAL	.12	.14	.16
INSURANCE - FIRE (PLANT, EQUIP., NEWSP.)	7.27	7.27	7.27
" - GROUP LIFE AND HOSPITALIZATION	4.49	5.23	5.98
" - LIABILITY, USE & OCCUPANCY, STEAM BLR.	3.43	3.43	3.43
TAXES - COMMUNICATION & TRANSPORTATION	2.11	2.46	2.81
" - REAL ESTATE AND PERSONAL PROPERTY	42.32	42.32	42.32
MAINTENANCE AND REPAIRS	7.63	8.94	10.22
DEPRECIATION - BUILDING AND IMPROVEMENTS	42.16	42.16	42.16
" - MACHINERY AND EQUIPMENT	219.39	219.39	219.39
" - FURNITURE AND FIXTURES	2.61	2.61	2.61
ESTIMATED TOTAL - FIXED COSTS PER ISSUE	<u>\$ 537.03</u>	<u>\$ 573.70</u>	<u>\$ 610.36</u>

ESTIMATED TOTAL PRODUCTION COST-PER ISSUE	<u>\$5,476.60</u>	<u>\$6,426.02</u>	<u>\$7,050.46</u>
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6/1/53

2 1975

IF SERIOUS THOUGHT IS BEING GIVEN TO PRODUCING SEMI-HARD PACKING SUPPLEMENTS AT OUR SAN FRANCISCO PLANT, WE SHOULD BEGIN EXPERIMENTING WITH THAT TYPE OF PACKING ON OUR GOING WEEKLY SUPPLEMENTS SO THAT WE ARE ON FIRM PRODUCTION GROUND IF AND WHEN THE WORK IS TAKEN INTO THE PLANT.

O. T. BONDY

TJED

CC: MR. JOHN SACCHIA
FILE (2)

P.S. THE FREIGHT RATE FROM SAN FRANCISCO TO PORTLAND IS \$.72 PER C/T PLUS 15% SURCHARGE, PLUS 3% TRANSPORTATION TAX, FOR A TOTAL OF \$.85234 PER C/T. THE MINIMUM CARLOAD AT THIS RATE IS 50,000 LBS.

THE WEIGHT, FREIGHT COST AND FREIGHT COST PER THOUSAND COPIES TO PORTLAND WOULD BE:

	<u>12 PAGE</u>	<u>14 PAGE</u>	<u>16 PAGE</u>
WEIGHT OF 300,000 COPIES	45,000 LBS.	52,500 LBS.	60,000 LBS.
COST OF FREIGHT	\$426.42	\$447.74	\$511.70
FREIGHT COST PER THOUSAND COPIES	\$1.42	\$1.49	\$1.71

JWP
for Binder

~~XX~~

~~XX~~

2. TERM

Paragraph 10 of such contract is hereby amended to read as follows:

10. ASSIGNMENT OR RESALE.

Before selling any newspaper purchased hereunder or attempting to assign any right to newspaper hereunder, Purchaser shall offer, in writing, to resell or release, as the case may be, to Seller any such newspaper. The price to the Seller on resale shall be equal to Seller's then current price under paragraph 4 (a) hereof, L.A. cart Purchaser's location. Release shall be without cost to either party.

This contract shall not be assigned without the prior written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or reorganization in which the Purchaser participates.

This agreement to be subject to all other terms and conditions of our contract of December 8, 1954 ~~hereinafter~~ thereto not herein specifically changed.

IN WITNESS WHEREOF, each of the parties has caused this amendment to the contract
to be signed by the parties on December 8, 1955 and attested to by
executed in its behalf by its appropriate representative duly authorized for this purpose
day of November 1955.

HEARNST ENTERPRISES, INC.

4. *R. O. Thompson*
PURCHASER
TITLE *Pr. 14002*

COOSA RIVER NEWSPRINT COMPANY

by John A. Lutz
TITLE Vice-President

APRIL 4, 1955

	<u>CIRCULATION</u> <u>45</u>	<u>HOURS</u>	<u>NET</u>	<u>TOTAL</u> <u>TRANS. SAVINGS</u>
<u>TEXAS GROUP</u>				
ABILENE, TEXAS, REPORTER	82,000	4.48	18,750	29.55
BIG SPRINGS, TEXAS, HERALD	19,000	1.88	10,106	6.71
CORPUS CHRISTI, TEXAS, CALLER	144,500	9.14	15,809	88.56
DENISON, TEXAS, HERALD	24,000	1.16	20,690	5.49
GREENVILLE, TEXAS, BANNER	9,400	.50	18,800	
MARSHALL, TEXAS, MESSENGER	24,500	1.29	18,932	8.88
PARIS, TEXAS, NEWS	23,000	2.04	11,275	8.74
SAN ANGELO, TEX., STANDARD TIMES	78,500	5.86	13,376	13.85
SNYDER, TEXAS, DAILY NEWS	10,000	.70	14,285	1.76
TOTAL TEXAS GROUP	416,900	27.05	154,12	163.54
<u>DECATUR GROUP</u>				
ANDERSON, S. C., INDEP.	88,000	4.99	17,635	12.07
BRADENTON, FLA., HERALD	22,000	1.31	16,774	8.82
DANVILLE, VA., REGISTER	40,000	3.04	13,158	.19
DECATUR, ALA., DAILY	27,300	2.59	10,541	10.03
ELIZABETH CITY, N. C., ADVANCE	16,000	1.36	11,765	.08
HEREFORD, TEXAS	5,500	.50	11,000	
HUNTSVILLE, ALA., TIMES	39,200	2.32	16,897	14.04
KANNAPOLIS, N. C., INDEP.	21,200	1.36	15,388	1.92
LAKELAND, FLA., LEDGER	35,000	3.24	10,802	14.99
LYNCHBURG, VA., NEWS & SENTINEL	49,500	3.28	15,071	
MONROE, LA., STAR BOLD	69,000	4.93	13,796	28.74
ORANGEBURG, S. C., DEMOCRAT	14,000	1.26	11,111	1.32
PENSACOLA, FLA., JOURNAL	98,000	6.43	15,123	43.22
TALLAHASSEE, FLA., CAPITAL	30,000	2.50	12,070	
TUPELO, MISS., JOURNAL	28,000	1.58	7,621	
TOTAL DECATUR GROUP	582,700	42.74	13,634	136.02
<u>GENERAL GROUP</u>				
BRISTOL, VA., COURIER	50,000	4.48	11,312	36.02
CLEARWATER, FLA., SUN	22,000	1.38	16,667	8.82
GADSDEN, ALA., TIMES	47,200	3.33	14,174	16.35
MARTINSVILLE, VA., BULLETIN	17,400	.99	17,575	
SPARTANBURG, S. C., JOURNAL	73,500	4.31	18,213	10.70
TUSCALOOSA, ALA., NEWS	33,500	2.02	16,584	11.76
TOTAL GENERAL GROUP	248,600	16.37	15,168	83.65
<u>SPECIAL GROUP</u>				
CHARLESTON, S. C., NEWS & COURIER	128,000	8.67	14,763	17.29
DURHAM, N. C., HERALD SUN	79,000	6.58	12,006	4.15
MONTGOMERY, ALA., ADVERTISER	155,000	9.23	16,793	58.80
NEW ORLEANS, LA., ITEM	234,000	12.70	18,425	60.77
WICHITA FALLS, TEX., TIMES	99,000	7.37	13,439	6.71
WILMINGTON, N. C., STAR NEWS	56,500	4.02	11,722	5.81
TOTAL SPECIAL GROUP	751,500	47.37	15,222	152.73

	<u>CIRCULATION</u> <u>4⁸</u>	<u>HOURS</u>	<u>NET</u>	<u>TOTAL</u> <u>TRANS. SAVING</u>
<u>ASHEVILLE GROUP</u>				
ASHEVILLE, N. C., CITIZEN	106,500	6.39	16,666	14.82
JACKSON, TENN., SUN	32,500	3.15	10,317	21.02
LAKE CHARLES, LA., AMERICAN	<u>48,500</u>	<u>3.93</u>	12,341	<u>12.08</u>
TOTAL ASHEVILLE GROUP	187,500	13.47	13,920	47.92
<u>TYLER GROUP</u>				
ORANGE, TEXAS, LEADER	13,500	1.25	10,800	3.38
TEXAS CITY, TEXAS, SUN	9,700	.88	11,023	1.24
TYLER, TEXAS, COURIER TIMES	<u>47,500</u>	<u>4.22</u>	11,256	<u>6.22</u>
TOTAL TYLER GROUP	70,700	6.35	11,134	10.84
TOTAL ALL GROUPS	2,257,900	155.37	14,532	595.70

SOUTHERN PRESS & NEWSPRINT REQUIREMENTS 1956

	CIRCULATION	S.W. HOURS	410 ONLY	410 & 717	410 & 717 & 565
SPECIAL EIGHTS					
8-P	1,582,800	108.50	108.50	38.54	38.54
ASHEVILLE GROUP	187,500	13.47		13.47	13.47
TYLER GROUP	70,700	6.35		6.35	6.35
TEXAS GROUP	416,900	27.05		27.05	27.05
MIAMI HERALD	1,200,000	60.00	30.00	30.00	30.00
AUGUSTA HERALD	266,000	19.50		9.75	9.75
BIRMINGHAM	640,500	38.45		12.82	12.82
ORLANDO	178,500	15.82		5.27	5.27
ST. PETERSBURG	178,500	15.82		5.27	5.27
SHREVEPORT	327,000	22.50		7.50	7.50
410 ONLY			108.50		
410 & 717			107.68	107.69	
410 - 717 - 565				109.15	109.15

WEEKLY NEWSPRINT REQUIREMENTS

	CIRCULATION	HOURS	JAN.-FEB.	MAR.-APR.	MAY-DEC.	TOTAL LAB. TONS
410 ONLY	1,582,800	108.50	75,975			607,800 304
410 - 717	3,457,900	215.37		165,979		1,493,811 747
410 - 717 - 565	5,018,400	327.46			240,883	8,430,982 4,215
TOTAL NEWSPRINT REQUIRED FOR 1956						10,532,516 5,266

1854

COPIES: JOHN BOOTH, TOM BRENNAN, JOE CLINTON, BESSIE, VINCE, FIVE EXTRAS

MARCH 29, 1956

MR. G. J. NEALENS, SECRETARY
CHAMBER OF COMMERCE
SYLACAUGA, ALABAMA

P-124 FOR IDENT.
P-124 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

DEAR JACK:

WE HAVE, OF COURSE, RECEIVED YOUR PROPOSED AGREEMENT AND YOUR REQUEST FOR MORE INFORMATION FROM INTERNATIONAL COLOR PRINTING COMPANY AND GREATER BUFFALO PRESS. WE HAVE GONE OVER THE AGREEMENT CAREFULLY AND BOTH BUFFALO AND WILKES-BARRE WERE CONSIDERABLY DISTURBED BY THE FACT THAT WE WOULD HAVE TO PAY FIVE PERCENT INSTEAD OF THREE AND ONE-HALF PERCENT WHICH WAS THE FIGURE ORIGINALLY OFFERED. NO DOUBT, YOU REALIZE THIS DIFFERENCE IN INTEREST AMOUNTS TO ALMOST \$100,000 ON THE PRINCIPAL INVOLVED. THIS EXCESS PAYMENT, WHICH WILL RESULT FROM THE DIFFERENCE BETWEEN $3\frac{1}{2}\%$ AND 5% , IS SO GREAT THAT WE HAVE DECIDED THAT IT WOULD BE MUCH BETTER FOR US TO OWN OUR BUILDING AND WITH THIS IN MIND WE PLAN TO START NEGOTIATIONS EITHER WITH INSURANCE COMPANIES DOWN YOUR WAY OR WITH THE LOCAL BANKS WITH THE VIEW TO OBTAINING A MORTGAGE VERY SIMILAR OR BETTER IF POSSIBLE THAN THE ONE YOU HAD IN MIND. WE HAVE THE NECESSARY MONEY FOR THE DOWN PAYMENT AND WE WOULD LIKE TO TALK TO YOU AND MAYOR HOWARD CONCERNING THE TURNING OVER OF THE LAND TO US WITH THE UNDERSTANDING THAT WE WILL START ERECTION OF PLANT IN SYLACAUGA. WILL YOU LET US KNOW IF YOU CAN COME TO WILKES-BARRE AND MEET? SINCE THE CITY HAS BEEN SO COOPERATIVE AND SINCE MAYOR HOWARD HAS SHOWN SUCH A DEEP INTEREST IN OUR PLANS, I SINCERELY HOPE THAT HE WILL BE ABLE TO MAKE THE TRIP WITH YOU.

BEST REGARDS.

SINCERELY YOURS,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN

JG:MM

*3/30 AM - Nealens called J. J. Gorman
near + had been to MS.
3 1/2% on down payment T. 1134
5% " " 1134*

CC: KENNETH KOEBBLER, BILL HAMMOND.

CC: JOHN BOOTH, TOM BRENNAN, JOE CLINTON, BESSIE, VINCE, 4 EXTRAS.

MARCH 30, 1956

MR. WALTER J. KOEBBLER,
GREATER BUFFALO PRESS,
302 GROTE STREET,
BUFFALO, N. Y.

P-125 FOR IDENT
P-125 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

DEAR WALTER:

UPON MY RETURN FROM BUFFALO THE OTHER DAY I WROTE A LETTER TO JACK NEALEANS OF THE SYLACAUGA CHAMBER OF COMMERCE ASKING HIM TO COME TO WILKES-BARRE. SEE COPY OF LETTER ATTACHED.

THIS MORNING MR. NEALEANS TELEPHONED, THAT WAS BEFORE HE RECEIVED MY LETTER. HE WISHED TO TELL ME THAT THE INTEREST RATE ON THE DOWN PAYMENT (UNDER THE SYLACAUGA AGREEMENT OUTLINED LAST WEEK) WOULD BE $3\frac{1}{2}\%$ AND INTEREST ON THE BALANCE WOULD BE 5% . I TOLD HIM WE WERE INTERESTED IN OWNING OUR OWN BUILDING, PROVIDED WE CAN OBTAIN THE LAND AND HE FELT THERE WOULD BE NO OBJECTION THERE. HOWEVER, THE CHANCES ARE THAT NO MATTER WHO WE DO BUSINESS WITH WE WILL HAVE TO HAVE THE SAME KIND OF INFORMATION ABOUT BUFFALO EARNINGS AS WAS EARLIER REQUESTED BY THE PEOPLE IN BIRMINGHAM AND SYLACAUGA. I EXPECT MR. NEALEANS AND MR. HOWARD WILL BE UP HERE SOMETIME DURING THE COMING WEEK AND IT MAY BE THAT WE WILL GO TO BUFFALO WITH THEM.

DURING OUR CONVERSATION LAST WEEK WE DISCUSSED THE COST OF HAULING NEWSPRINT FROM COOSA RIVER TO SYLACAUGA. I TOLD YOU WE FIGURED ON 50ϕ PER TON MILE HAULING 10,000 TON YEARLY. I LOOKED UP MY FIGURES AND FIND THAT THE ACTUAL ESTIMATED COST WAS $.8278$ PER TON, THAT WAS BASED ON USING TRUCK FOR ONLY PART OF THE WEEK AND CHARGING OFF ALL DEPRECIATION IN FOUR YEARS. BY USING TRUCK FOR HAULING BUNDLES, COST PER MILE WILL DROP DOWN TO SOMEWHERE IN THE NEIGHBORHOOD OF 50ϕ .

FOLLOWING IS COPY OF ESTIMATE OF TRUCK COST AS PREPARED ABOUT A YEAR

AGO:

SUMMARY OF TRUCK COSTS

	<u>5 MILES</u>	<u>ADDITIONAL 21 MILES</u>
INSURANCE	14.96	14.96
LICENSE	1.92	1.92
LUBRICATION & ADJUSTMENTS	.20	1.00
TIRES	32.00	52.00
LABOR FRINGE COSTS	5.40	6.96
DEPRECIATION	59.13	59.13
GAS	4.00	20.00
OIL	.32	1.60
REPAIRS	1.62	8.00
TOTAL	<u>118.33</u>	<u>165.57</u>
COST PER TON	.5917	.8278

1856

LTR. - MR. J. WALTER KOEBLER

MARCH 30, 1956

I AM ALSO ENCLOSED A DETAILED BREAK DOWN OF OUR ESTIMATE OF COST FOR HAULING 200 TONS WEEKLY.

HAVE BEEN THINKING CONSIDERABLY ABOUT THE ADVANTAGE OF BEING ON SOUTHERN RAILWAY. SYLACAUGA IS ON THE SOUTHERN RAILWAY BUT THERE IS NO BAGGAGE SERVICE. THE NEAREST BAGGAGE SERVICE IS AT ANNISTON OR BIRMINGHAM, EACH ABOUT 50 MILES FROM COOSA RIVER. IF WE WERE LOCATED AT EITHER POINT IT IS TRUE WE WOULD HAVE THE ADVANTAGE OF BAGGAGE SERVICE AT ALL TIMES BUT ALSO WE WOULD HAVE TO MAKE 100 MILE ROUND TRIPS FOR NEWSPRINT AND WE WOULD DO THIS JUST ON THE CHANCE THAT SOMETIMES WE MIGHT HAVE TO USE BAGGAGE EXPRESS ENTIRELY.

BY LOCATING NEAR THE MILL WE SAVE CONSIDERABLY ON THE COST OF HAULING NEWSPRINT. IF WE WERE LOCATED IN ATLANTA AND SHIPPING ENTIRELY BY BAGGAGE EXPRESS, TOTAL COST TO ALL THE NEWSPAPERS IN THE SOUTH WOULD BE \$600.00 LESS, BUT WE WOULD NOT GET THE SAVING. NEWSPAPERS WOULD RECEIVE IT AND WE IN TURN WOULD HAVE TO PAY THE ADDITIONAL NEWSPRINT COST. IF WE LOCATE IN A TOWN NOT ON A RAILWAY WHERE BAGGAGE EXPRESS IS AVAILABLE, THERE SEEMS TO BE NO REASON WHY WE CANNOT CHARGE THE COST OF HAULING TO THE POINT WHERE RAILROAD WILL ACCEPT SUPPLEMENTS IN BAGGAGE SERVICE. SEE FIRST PARAGRAPH OF OUR CONTRACT WITH KING UNDER THE HEADING "CONTRACT A" - RATE SCHEDULE. THIS PARAGRAPH STATES:

"IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH SEVENTH, SUB-DIVISION "A", TO AGREEMENT BETWEEN KING FEATURES SYNDICATE AND INTERNATIONAL COLOR PRINTING COMPANY DATED THE 30TH DAY OF JULY, 1955, THE FOLLOWING RATES SHALL APPLY FOR EACH ONE THOUSAND FOUR PAGE STANDARD SIZE SUPPLEMENTS OR EQUIVALENT, PRINTED, WRAPPED AND LABELED READY FOR SHIPMENT F.O.B. PRINTING STATION:"

THE LAST LINE IS THE IMPORTANT ONE. ACCORDING TO OUR CONTRACT OUR PRICES ARE F. O. B. PRINTING PLANT, THEREFORE, WE MUST HAUL TO BIRMINGHAM OR ANNISTON IN ORDER TO GIVE PAPERS TO THE SOUTHERN RAILWAY, WHY COULDN'T WE CHARGE FOR THIS SERVICE? IF WE WERE TO DELIVER PAPERS FROM COOSA RIVER TO BIRMINGHAM NEWS, I DON'T THINK THE PAPER WOULD EXPECT THE SERVICE FOR NOTHING AND THEREFORE WHY SHOULD OTHER NEWSPAPERS EXPECT FREE DELIVERY FROM COOSA RIVER TO THE BIRMINGHAM STATION OF THE SOUTHERN RAILWAY.

WILL BE IN TOUCH WITH YOU AGAIN AFTER WE HEAR FROM NEALEAND AND HOWARD.

SINCERELY YOURS,

INTERNATIONAL COLOR PRINTING CO.

JOSEPH J. GORMAN

MDL.

P. S. I AM WRITING THIS FOLLOWING OUR TELEPHONE CONVERSATION THIS MORNING TO THE EFFECT THAT IN THE MONTH OF APRIL WE WILL BE ABLE TO GIVE YOU AN ADDITIONAL 75 TO 100 TONS AND TOM BRENNAN WILL GET IN TOUCH WITH BILL HAMMOND. IT IS EXTREMELY IMPORTANT OF COURSE THAT WE KEEP VERY QUIET ABOUT THIS AS IT WOULD BE VERY BAD SWIFT-HEARST OR KING FEATURES TO LEARN OF THE DIVERSION.

COMPRISON OF MOST RECENT SCHEDULE RECEIVED FROM HENNDON WITH S.E. RATES FROM BIRMINGHAM

FROM	W.B. PRESENT	HENDON SYLACAUGA	BAGGAGE RATE BIRMINGHAM
ALA. DECATUR	1.31	.55	.72
GADSDEN	1.31	.55	.72
HUNTSVILLE	1.31	.55	.72
MONTGOMERY	1.31	.55	.72
TUSCALOOSA	1.31	.55	.72
BIRMINGHAM	1.31	.55	.72
GA. AUGUSTA	1.21	.65	.72
COLUMBUS	1.31	.55	.72
SAVANNAH	1.21	.65	.72
WAYNESBORO	1.25	.70	1.44
Macon	1.31	.65	.72
ROME	1.31	.65	.72
S.C. ANDERSON	1.05	.75	.72
CHARLESTON	1.05	.85	.72
COLUMBIA	1.05	.85	.72
GREENVILLE	1.05	.75	.72
ORANGEBURG	1.05	.85	.72
SPARTANBURG	1.30 - Assoc.	—	.72
	1.05 - H.	.85	.72
VA. BRISTOL	1.27	No	
CHARVILLE	.80	1.10	
FARMVILLE	.84	1.10	.79
LYNNHURST	.84	1.10	2.30
MARTINSVILLE	.84	1.10	.86
ROSFORD	.55 Pa.	1.10	2.30
RICHMOND	.56	1.10	1.44
ROANKE	.70	1.10	.93
			2.30
FLA. BRADENTON	1.47	.70	1.44
CLEARWATER	1.47	.70	1.44
FT. PIERCE	1.47	.70	1.44
GAINESVILLE	1.47	.70	2.30
LAKELAND	1.47	.70	1.44
MIAMI	1.58	.70	1.44
ORLANDO	1.47	.70	1.44
PENSACOLA	1.47	.70	1.44
ST. AUGUSTINE	1.47	.70	1.30
ST. PETERSBURG	1.47	.70	1.90
TALLAHASSEE	1.47	.70	1.44
TAMPA	1.45 - A	.70	1.44

CC: WALTER KOESSLER, KENNETH KOESSLER, BILL HAMMOND.
 CC: JOHN BOOTH, JOE CLINTON, TOM BRENNAN, VINCE, BEBBIE, 6 EXTRAS.

MARCH 30, 1936

FROM	W.B. REPRESENT	HERNDON SYNACALIDA	BAGGAGE RATE BIRMINGHAM
N.C. ASHEVILLE	1.05	.75	.72
CHARLOTTE	.84	.75	.72
DURHAM	.95	.90	.79
ELIZA CITY	.80 - Pa.	No	1.51
GASTONIA	.95	.75	.72
HERNDON	.95	.90	1.44
KANAWPOLIS	.95	.80	.72
RALEIGH	.90	.95	.79
WILMINGTON	1.05	1.00	1.44
WINTON SALEM	.95	.80	.79

Officers & Directors

Side Color Printing Co. 8/3/60
4/10/57 to 8/3/60

Joseph J. Garman	Wm	Director
John W. Kessler	Geo Wm	Director
Kenneth L. Kessler	Henry	Director
Joseph T. Clinton	Robt. Wm	Director
Wm L. L. L. L.	James	Director

P-157 FOR IDENT.
P-177 IN EVID.
 H. T. NOEL
 OFFICIAL REPORTER
 U. S. DISTRICT COURT

1860

137 FOR IDENT.
137 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

July 8, 1956

Mr. J. J. Gorman
International Color Printing Co.
268 George St.
Wilkesbarre, Pa.

Dear Mr. Gorman:

I am enclosing a list in duplicate of
all the papers we print, the quantities of
the runs and the average number of pages.

If I can be of any further assistance,
please advise.

Very truly yours,

Betty Voak (Mrs.)
Circulation Dept.

JBY
CC: J. W. Koessler
Enc. (2)

(Betty ok to file)

GREATER BUFFALO PRESS INC.

PAPER	CIRCULATION	TYPE OF SECTION
Allentown	80,000	10 Pg. Stand.
Atlanta Journal	818,000	14 Pg. Stand.
Bates Rouge	50,000	12 Pg. Stand.
Baltimore Sun	327,000	14 Pg. Stand.
Boston Globe	418,000	10 Pg. Stand.
Boston Post	218,000	10 Pg. Stand.
Buffalo Courier Express	312,000	12 Pg. Stand.
Chicago Daily News	630,000	16 Pg. Tab.
Chicago Sun Times	688,000	16 Pg. Tab.
Cincinnati Enquirer	284,000	12 Pg. Stand.
Cleveland Plain Dealer	636,000	12 Pg. Stand.
Columbus Citizen	113,000	8 Pg. Stand.
Columbus Dispatch	227,000	14 Pg. Stand.
Columbus Star	82,000	12 Pg. Tab.
Calgary Herald	68,000	16 Pg. Tab.
Dallas News	216,000	12 Pg. Stand.
Dayton Herald	93,000	8 Pg. Stand.
Detroit Free Press	520,000	12 Pg. Stand.
Detroit News	384,000	12 Pg. Stand.
Elmhurst News Tribune	74,000	10 Pg. Stand.
Elmira Telegraph	48,500	12 Pg. Stand.
Erie Dispatch	50,000	12 Pg. Stand.
Erie Times	48,000	12 Pg. Stand.
Evansville, Ind. Courier	94,000	12 Pg. Stand.
Ft. Wayne	96,000	12 Pg. Stand.
Ft. Worth	56,000	16 Pg. Tab.
Hawston Chronicle	233,000	10 Pg. Stand.
Indianapolis Star	325,000	16 Pg. Stand.
Indianapolis Times	110,000	12 Pg. Stand.
Kansas City Star	370,000	10 Pg. Stand.
Knoxville, Tenn. Sentinel	112,000	12 Pg. Stand.
Louisville Courier	320,000	8 Pg. Stand.
London Free Press	102,000	16 Pg. Tab.
Lancaster News	78,000	12 Pg. Stand.
Miami News	120,000	14 Pg. Stand.
Mobile Register	87,000	8 Pg. Stand.
Montreal	320,000	20 Pg. Tab. + 12 Pg. Tab. Novel
St. John, Newfoundland	24,000	20 Pg. Tab. + 12 Pg. Tab. Novel
Puerto Rico	32,000	16 Pg. Stand.
Nashville Tennessean	204,000	10 Pg. Stand.
NY Herald Tribune	615,000	6 Pg. Stand.
NY Post	290,000	12 Pg. Tab.
Ottawa Journal	68,000	16 Pg. Tab.
Poughkeepsie New Yorker	30,000	16 Pg. Tab.
Rapine Sunday Bulletin	30,000	8 Pg. Stand.
Rockford Democrat & Chron.	188,000	14 Pg. "
Springfield State Journal	68,000	16 Pg. Tab.
St. Louis Globe Democrat	385,000	12 Pg. Stand.
St. Paul Pioneer Press	197,000	12 Pg. Stand.
San Antonio Express	118,000	10 Pg. Stand.
Sioux City Journal	88,000	12 Pg. Stand.
Sioux Falls	82,000	10 Pg. Stand.
Sioux Falls	62,000	10 Pg. Stand.

PAPER	CIRCULATION	TYPE OF SECTION
Syracuse Herald American	224,000	12 Pg. Standard
Syracuse Post Standard	115,000	12 Pg. Standard
Amesbury, Texas	70,000	10 Pg. Standard
Lubbock, Texas	54,700	10 Pg. Standard
Toledo Blade	187,000	14 Pg. Standard
Toronto Telegram	293,000	16 Pg. Tabloid
Utica Observer	55,000	10 Pg. Standard
Washington Star	203,000	12 Pg. Standard
Waterloo Courier	52,500	6 Pg. Standard
Yonkers Daily Vindicator	145,000	12 Pg. Standard
Athens, Ga. Banner	7,500	8 Pg. Standard
Columbia Record	20,500	8 Pg. Standard
Dubuque Telegraph	40,400	8 Pg. Standard
Lacrosse, Wisc.	34,300	8 Pg. Standard
Lacrosse, Wisc.	4,000	8 Pg. Standard
Nelbourne Times	6,000	8 Pg. Standard
St. Augustine	10,000	8 Pg. Standard
Statesville, N.C.	18,500	8 Pg. Standard
Sanatone World	18,500	8 Pg. Standard
Ft. William	14,200	16 Pg. Tab.
Hamilton Spectator	28,500	16 Pg. Tab.
Kingsville, Ontario	20,300	16 Pg. Tab.
Kirkland Lake, Ontario	8,250	16 Pg. Tab.
Lethbridge Herald	17,675	16 Pg. Tab.
Medicine Hat News	8,900	16 Pg. Tab.
Moncton, N.B. Times Press	24,375	16 Pg. Tab.
Moore, N.B. Times	10,050	16 Pg. Tab.
Ottawa Citizen	55,550	16 Pg. Tab.
Peterborough, Ontario	18,300	16 Pg. Tab.
Pt. Arthur, Ont. News	13,500	16 Pg. Tab.
Reynolds, Ont. News	6,325	16 Pg. Tab.
Quebec, P.Q. Chronicle	6,400	16 Pg. Tab.
St. John New Brunswick	47,750	16 Pg. Tab.
Sudbury, Ont. Star	27,575	16 Pg. Tab.
Tinnian, Ont. Daily Press	00	16 Pg. Tab.
Western Star, Corner Brook	7,475	16 Pg. Tab.
Atlantic City Press	28,500	8 Pg. Stand.
Boston Texas News Journal	12,300	3 Pg. Stand.
Butler, Ala. Eagle	24,500	8 Pg. Stand.
Tri Cities Florence	18,750	8 Pg. Stand.
St. Johns, Fla.	11,700	8 Pg. Stand.
Hammond Times	55,000	8 Pg. Stand.
Huron, O. Plainness	12,750	8 Pg. Stand.
Franklin, City, Fla. News	16,150	8 Pg. Stand.
Franklin, City, Fla. News	53,000	8 Pg. Stand.
Franklin, City, Fla. News	13,200	8 Pg. Stand.
Franklin, City, Fla. News	20,500	8 Pg. Stand.
Franklin, City, Fla. News	38,000	8 Pg. Stand.
Franklin, City, Fla. News	65,500	8 Pg. Stand.
Franklin, City, Fla. News	16,300	8 Pg. Stand.
Franklin, City, Fla. News	22,000	8 Pg. Stand.
Franklin, City, Fla. News	49,500	8 Pg. Stand.

PAPER	CIRCULATION	TYPE OF SECTION
Abilene Reporter News	48,800	8 Pg. Stand.
Big Spring Herald	10,800	8 Pg. Stand.
Carpus Christi Caller Times	72,000	12 Pg. Stand.
The Donison Herald	12,750	8 Pg. Stand.
The Greenville Banner	8,800	8 Pg. Stand.
Marshall News Messenger	12,750	8 Pg. Stand.
The Paris News	12,500	8 Pg. Stand.
San Angelo Standard Times	40,000	8 Pg. Stand.
The Snyder Daily News	8,280	8 Pg. Stand.
Bozeman Montana Chronicle	8,000	8 Pg. Tab.
Bozeman Daily News	8,800	8 Pg. Tab.
Cambridge Ohio Daily Jeff.	14,000	8 Pg. Tab.
Clarksville Leaf Chron. Tenn	8,500	8 Pg. Tab.
Evening Standard Uniontown	20,250	8 Pg. Tab.
Cassette & Hall Hockistown	2,400	8 Pg. Tab.
Goodland Daily News	2,000	8 Pg. Tab.
Handerson Gleaner & Journal	8,000	8 Pg. Tab.
Lorain Ohio Journal	25,000	8 Pg. Tab.
Manfield News Journal	25,500	8 Pg. Tab.
Marion Herald, Uniontown	11,000	8 Pg. Tab.
Mexico City News	8,000	8 Pg. Tab.
Pine Bluff Commercial	17,000	8 Pg. Tab.
Roanoke Rapids	4,650	8 Pg. Tab.
Roswell Daily Record N.M.	11,000	8 Pg. Tab.
Sunday Mirror, Columbia	1,000	8 Pg. Tab.
Talladega Daily News	2,100	8 Pg. Tab.
Vermont Sunday News, Burlington	15,000	8 Pg. Tab.
Trail Daily News	6,000	8 Pg. Tab.
Yankee Independent	1,900	8 Pg. Tab.
Ada Evening News	2,600	8 Pg. Tab.
Artesia Daily Press	2,200	8 Pg. Tab.
Carlsbad Current Argus	8,000	8 Pg. Tab.
Durango Herald Democrat	4,500	8 Pg. Tab.
Farmington Times	5,500	8 Pg. Tab.
Gallup Independent	2,750	8 Pg. Tab.
Hamilton Royal Gazette	8,000	8 Pg. Tab.
Las Hornas		
Kingston Free Press	10,750	8 Pg. Tab.
Mexico City News	5,000	8 Pg. Tab.
Neenah Guardian	8,000	8 Pg. Tab.
Oregon City Banner Courier	8,000	8 Pg. Tab.
Pasadena Chronicle Star	8,300	8 Pg. Tab.
Pasadena Sunday Eagle	8,000	8 Pg. Tab.
Williamshy News Herald	10,000	8 Pg. Tab.
Kentucky Ill Journal	25,000	8 Pg. Tab.
Artesia Ill. News News	22,100	8 Pg. Tab.
Joliet Ill.	25,000	8 Pg. Tab.
Chillicothe Gazette	15,500	8 Pg. Tab.
Beranda Recorder	3,750	8 Pg. Tab.

GREATER BUFFALO PRESS INC.

<u>PAPER</u>	<u>CIRCULATION</u>	<u>TYPE OF SECTION</u>
Broken Bow, Nebraska	5,550	8 Pg. Tab.
Spencer, Iowa Times	5,000	8 Pg. Tab.
Huntington, Ind. Herald	5,700	8 Pg. Tab.
Wiles City, Mont. Star	4,650	8 Pg. Tab.
Weland, Wia. News	5,300	8 Pg. Tab.
Ft. Pierce, Fla.	4,700	8 Pg. Tab.
Leesburg, Wia. Comm. Ld.	2,400	8 Pg. Tab.
Ocala, Fla. Banner	5,100	8 Pg. Tab.
Selma, Times Ala.	5,800	8 Pg. Tab.
Corbin, Ky. Times	4,200	8 Pg. Tab.
Frankfort, Ky.	5,800	8 Pg. Tab.
Haciara, Ky.	5,500	8 Pg. Tab.
Elizabethton, Penn.	5,750	8 Pg. Tab.
Cocaine, Mass.	3,500	8 Pg. Tab.
Houndsville, W. Va.	3,000	8 Pg. Tab.
Fulaski, Va.	4,950	8 Pg. Tab.
Suffolk, Va. News	7,400	8 Pg. Tab.
Shelby, Ohio Globe	3,200	8 Pg. Tab.
Griffin Daily News	6,700	8 Pg. Tab.
Elkono, Ind. Trib.	11,950	8 Pg. Tab.
Valdosta, Ga. Times	10,000	8 Pg. Tab.
Norman, Okla. Transcript	7,450	8 Pg. Tab.
Lewiston, Mont. News	3,700	8 Pg. Tab.
McCook, Neb. Gazette	5,650	8 Pg. Tab.
Gainesville, Ga.	7,500	8 Pg. Tab.
Elvira, Ohio	22,000	8 Pg. Tab.
Wyoming State Cheyenne	11,750	8 Pg. Tab.
Laramie, Wyo. Daily Bull.	3,250	8 Pg. Tab.
Rawlins, Wyo.	3,600	8 Pg. Tab.
Fock Springs Wyo.	5,300	8 Pg. Tab.
Northern Wyo. Daily	5,500	8 Pg. Tab.
Ponca City, Okla.	11,500	8 Pg. Tab.
Sterling, Colorado	5,050	8 Pg. Tab.
Southwest Times Record		
Ft. Smith, Arkansas	22,500	8 Pg. Tab.
Sunday Examiner-Enterprise		
Macleanville, Okla.	10,500	8 Pg. Tab.
Sunday Times		
Okmulgee, Okla.	7,200	8 Pg. Tab.
The Journal Tribune		
Blackwell, Okla.	7,000	8 Pg. Tab.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

GREATER BUFFALO PRESS, INCORPORATED
et al.,
Defendants.

Civil Action No. 9004

1-13-65
1-13-65 IN EVID.
H. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

COMPOSITE STIPULATION OF FACTS

(Irrespective of the tense used, the following facts unless otherwise designated refer to the period from January 1, 1954 to January 1, 1961).

1. Greater Buffalo Press, Inc., (Greater Buffalo) was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York. [Stip. 2, p. 2, par. 1]*/

2. Greater Buffalo was a printer of color comic supplements, and had been a printer of such supplements since 1933. [Stip. 2, p. 3, par. 7]

3. Greater Buffalo printed color comic supplements at its plant in Buffalo, New York and had facilities for printing such supplements at Dunkirk, New York. [Stip. 2, p. 3, par 8]

4. Many newspapers purchased their color comic supplements from Greater Buffalo, directly, generally pursuant to written contracts for a period of one year, subject to cancellation by either party for cause on sixty days notice. [Stip. 3, p. 1, par. 11]

*/ "Stip 1" hereinafter refers to stipulation dated September 24, 1963.
"Stip 2" hereinafter refers to stipulation dated January 15, 1963 and annexed to Stip. 1 as "Exhibit A".
"Stip 3" hereinafter refers to stipulation dated September 28, 1963.

5. In the sale of color comic supplements by Greater Buffalo, the cost of transportation was paid for by the newspaper customers. In most instances Greater Buffalo advanced the transportation cost, and was reimbursed by the newspaper customers. [Stip. 2, p. 3, par. 10]

6. Prior to June 1955 Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King and NEA as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. [Stip. 1, p. 3, par. 7]

7. The International Color Printing Company (International) was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. [Stip. 2, p. 2 par. 4]

8. Prior to June 1955, International was a printer of color comic supplements, and maintained printing plants at Wilkes Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois until sometime after June 1955. [Stip. 1, p. 2, par. 2]

9. International from 1927 to June 1955 printed color comic supplements exclusively for King. [Stip. 1, p. 2, par. 3]

10. The color comic supplements printed by International for King were shipped directly to King's newspaper customers. Payments for such supplements by the newspapers were made to King pursuant to contracts between King and its newspaper customers. [Stip. 1, p. 2, par. 5]

11. The Hearst Corporation (Hearst) was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. King Features Syndicate (King) was an unincorporated division of Hearst. [Stip. 2, p. 2, par 2.]

12. King, a Division of The Hearst Corporation, licensed newspaper feature rights, including the subject matter of comics, and sold color comic supplements to newspapers. King, the Division of Hearst, did not print the color comic supplements it sold, but made arrangements to have such supplements printed for its newspaper customers. However, some newspaper subsidiaries of The Hearst Corporation did print color comic supplements. [Stip. 1, p. 2, par. 4]

13. King sold color comic supplements to newspapers generally pursuant to written contracts. The terms of these contracts varied from one to five years. [Stip. 3, p. 1, par. 12]

14. Prior to June 1955 King's competitors in the sale of color comic supplements to newspapers included Greater Buffalo, NEA, Eastern Color Printing Company, World Color Press, Inc., and Acme Colorprint Company, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. [Stip. 3, p. 1, par. 13]

15. In 1954, the annual gross receipts of Greater Buffalo for the sale and printing of color comic supplements was approximately \$8,613,000.00. During the same period International gross receipts for the printing of color comic supplements was approximately \$8,483,000.00 [Stip. 3, p. 2, par. 14]

16. On or about June 25, 1955 Greater Buffalo purchased the outstanding stock of International for \$575,000.00. [Stip. 1, p. 3, par. 8]

17. After Greater Buffalo acquired International's stock, International elected a new Board of Directors. Officers of Greater Buffalo were a majority of such elected Directors. [Stip. 2, p. 5, par. 27]

18. The compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955, in plaintiff's exhibit 62, previously designated document number 257 and marked "D-13" in a proceeding heretofore had in this case, is an accurate summary of the Joseph J. Gorman survey for that year. [Stip. 1, p. 3, par. 9]

19. Southwest Color Printing Corporation (Southwest) was a corporation organized and existing since 1956 under the laws of the State of Texas, with its principal place of business in Lufkin, Texas. Southwest was a wholly owned subsidiary of Greater Buffalo. [Stip. 2, p. 2, par. 3]

20. In or about the latter part of 1958, the printing of color comic supplements was commenced at the Lufkin, Texas, plant of Southwest Color Printing Corporation. [Stip. 2, p. 6, par. 29]

21. Dixie Color Printing Corporation (Dixie) was a corporation organized and existing since 1957 under the laws of the State of Alabama, with its principal place of business in Sylacauga, Alabama. Dixie was a wholly owned subsidiary of Greater Buffalo. [Stip. 2, p. 2, par. 6]

22. Newspaper Enterprise Association, Inc. (NEA) was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio. NEA was a subsidiary of The E W Scripps Company. [Stip. 2, p. 2, par. 3]

23. NEA licensed newspaper feature rights, including the subject matter of comics, and sold color comic supplements to newspapers at least from 1955 to 1961. NEA itself did not print the color comic supplements which it sold, but had such supplements printed by Buffalo Colorpress, Inc. and other comic printers. [Stip. 2, p. 4, par. 18]

24. Buffalo Colorpress was a printer of color comic supplements and maintained a printing plant in Buffalo, New York, until a short time after October 1955. [Stip. 2, p. 4, par. 19]

25. Until its liquidation in 1956, Buffalo Colorpress was a subsidiary of NEA, and NEA handled the sale to newspapers of the majority of the color comic supplements printed by Buffalo Colorpress prior to October 1955. [Stip. 2, p. 4, par. 20]

26. NEA at one time was known as NEA Service, Inc. In 1955 United Feature Syndicate, Inc. was a wholly owned subsidiary of United Press Association of New York, and during 1955 United Press Association of New York became a wholly owned subsidiary of The EW Scripps Company. [Stip. 1, p. 2, par. 6]

27. During the period from January 1, 1954 to January 1, 1961, unless otherwise designated, the following named individuals were in the employ of the indicated companies and held the title or job description referred to below:

<u>Name</u>	<u>Company</u>	<u>Position</u>
Herbert W. Walker	NEA	President 4/3/58 - 1/1/61; Vice President 1/1/54 - 4/3/58; General Manager
William A. Borglund	NEA	Vice President 7/27/55 - 1/1/61
Fred S. Ferguson	NEA	President 1/1/54 - 4/3/58
Earl H. Anderson	NEA	Business Manager 1957 - 1961
Eli C. Minton	NEA	Sales Representative
Med Mills	NEA	Sales Representative
Robert Whitehead	NEA	Sales Representative
Herbert W. Walker	Buffalo Colorpress, Inc.	Vice President 1/1/50 - 7/31/56; Director 1/1/54 - 1/1/61
William A. Borglund	Buffalo Colorpress, Inc.	Director 1/1/54 - 1/1/61
Earl H. Anderson	Buffalo Colorpress, Inc.	President 6/11/56 - 7/31/56; Director 6/11/56 - 7/31/56; Vice President 4/2/53 - 6/11/56

<u>Name</u>	<u>Company</u>	<u>Position</u>
L. E. Herman	Buffalo Colorpress, Inc.	President 1/1/50 - 3/17/56; Director 1/1/54 - 3/17/56
Fred S. Ferguson	Buffalo Colorpress, Inc.	Chairman 1/1/54 - 7/31/56; Director 1/1/54 - 7/31/56
Richard E. Berlin	Hearst	President
Joseph J. Gorman	International	President
John W. Booth	International	Treasurer 1955 - 1961
Bessie J. Gorman	International	Assistant Secretary 1955 - 1961
Kenneth L. Koessler	International	Vice President 1955 - 1961
William J. Hammond	International	Secretary
Tom Brennan	International	Purchasing Agent
Roger Zardus	International	Supervisor Machinery Maintenance
Vince Garvey	International	Transportation Manager
Joseph T. Clinton	International	Assistant Production Manager 1/1/54 - 1960
Frank J. Nicht	King	Sales Manager
Frank C. McLearn	King	General Manager 1958 - 1/1/61
Ward Green	King	General Manager 1/1/54 - 1958
Clarence Rabinow	King	Salesman
Edward Wade	King	Salesman
R. K. Rogers	King	Salesman
George Driscoll	King	Salesman
Sadie Elswit	King	Manager, Service Department
James Burns	King	Salesman, 1957

<u>Name</u>	<u>Company</u>	<u>Position</u>
Joseph Gorman	Dixie Color Printing Corporation	President 4/18/57 - 5/3/60
Joseph T. Clinton	Dixie Color Printing Corporation	Plant Manager, 1961; Assistant Secretary, 4/18/57; Director, 4/18/57
J. W. Koessler	Greater Buffalo	President
Kenneth L. Koessler	Greater Buffalo	Secretary
William Hammond	Greater Buffalo	Treasurer 8/15/55 - 1/1/61
L. E. Herman	Greater Buffalo	Vice President March 1956
R. O. Sternberger	Hearst	President, Hearst Enterprises, Inc., Hearst subsidiary, 12/8/54 Vice President, Newsprint Manager of Hearst subsidiaries engaged in the publication of Hearst newspapers
J. D. Gortatowsky	Hearst	Chairman, Hearst subsidiaries engaged in publishing Hearst newspapers
Raymond Bauman	International	Bookkeeper 1959
Fred Brown	International	Supervisor, Electrical Maintenance

[Stip. 2, p. 8, par. IIB]

28. The initials "WHB" in plaintiff's exhibits 35 and 34, previously numbered documents 24 and 75 indicate that such documents were either prepared by, or under the supervision of, William H. Borglund. [Stip. 2, p. 7, par. 33(a)]

29. The initials "EHA" in plaintiff's exhibit 31, previously numbered document 69 indicates that such document was either prepared by, or under the supervision of, Earl H. Anderson. [Stip. 2, p. 7, par. 33(d)]

30. (a) The initials appearing "WMB" in plaintiff's exhibit 36, and document previously numbered 28 indicate that such initials refer to William M. Borglund.

(b) The initials "BMW" in plaintiff's exhibits 39, 50, 44, 30, 46, and 48, and in documents previously numbered 26, 30, 35, 36, 65, 67, 68, 74, 76, 145, 146 and 182 indicate that such documents were either prepared by, or under the supervision of, Herbert W. Walker.

(c) The initials "KFS" in plaintiff's exhibits 36, 38 and 37, and documents previously designated numbered 28, 115 and 253 refer to King Features Syndicate. [Stip. 1, p. 3, par 10(a), (b) and (c)]

3. The initials "FJM" in plaintiff's exhibits 20, 22, 12, 19, and 10, and in documents previously numbered 57, 59, 96, 104, 107, 109, 113, 161, 165, 200, 252, 254, and 258 indicate that such documents were either prepared by or under the supervision of Frank J. Nicht, but do not indicate that such documents were prepared in the regular course of business of the aforesaid Nicht's employer or that it was any part of his duty as an employee to prepare such documents. [Stip. 3, p. 2, par. (15)]

Washington, D.C.

Dated: January 12, 1966

NUMBER PARTNERSHIP (NUMBER OF PARTNERS)	1 9 5 0	1 9 5 1	1 9 5 2	1 9 5 3	1 9 5 4	1 9 5 5	1 9 5 6	1 9 5 7	1 9 5 8	1 9 5 9
	25,119.	29,680.	31,732	32,540	31,050	29,976	29,736	26,960	25,687	25,993
TOTAL YEARLY INCOME	\$6,620,826.	7,246,422	8,389,461.	8,800,300.	8,466,940.	8,290,940.	8,386,108.	8,494,816.	7,693,548.	8,015,184.
OPERATING PROFIT BEFORE DEP. & TAXES	\$ 240,596.	267,000.	205,031.	197,900.	71,549.	236,022.	217,694.	180,704.	349,355.	489,692.
DEPRECIATION	37,636.	38,239.	48,216.	52,503.	53,995.	54,915.	93,630.	99,966.	110,745.	119,971.
PROFIT AFTER DEP.	202,960.	228,761.	156,815.	145,396.	17,554.	181,107.	114,063.	80,738.	238,610.	369,721.
TAXES	91,097.	130,084.	81,684.	74,705.	6,407.	92,807.	57,220.	38,828.	126,735.	196,800.
NET PROFIT AFTER DEPRECIATION & TAXES	111,863.	98,676.	75,131.	70,691.	11,146.	88,300.	56,843.	41,910.	111,875.	172,921.
NET PROFIT PER CENT OF INCOME	1.7%	1.4%	.9%	.8%	.1%	1.0%	.68%	.49%	1.45%	2.16%
WORKING CAPITAL	94,751.	67,909	(b) 36,998.	(b) 89,119.	(b) 107,728.	(b) 23,207.	537.	83,686.	250,497.	394,176.
DIVIDENDS PAID	49,500.	53,500.	55,500.	44,700.	34,800.	17,400.	--	--	--	--
AMOUNT OF ASSETS TO LIABILITIES	1.24-1	1.15-1	1-1	.93-1	.91-1	.92-1	1-1	1.14-1	1.47-1	171-1
NET WORTH	483,167.	514,374.	534,005.	570,461.	568,895.	698,946.	755,789.	802,620.	915,598.	1,089,726.

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 U. S. DISTRICT COURT

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 23-43), comprising its findings of fact and conclusions of law, is not yet reported.

JURISDICTION

The final judgment of the district court (App. B, *infra*, p. 44) was entered on May 26, 1970. The notice of appeal (App. C, *infra*, p. 45) was filed on July 24, 1970. The time for docketing the appeal was extended to September 23 and subsequently extended to October 8 by orders of Mr. Justice Harlan. The jurisdiction of this Court is conferred by Section 2 of

the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States v. Continental Can Co.*, 378 U.S. 441; *United States v. Pabst Brewing Co.*, 384 U.S. 546.

QUESTIONS PRESENTED

The ultimate question is whether the acquisition by the leading printer of color comic supplements of a comparably large printer of such supplements violated Section 7 of the Clayton Act. That question, in turn, involves the following subsidiary questions:¹

1. Whether the district court defined too narrowly the relevant product market, by focusing exclusively upon the direct printing competition between the acquiring and acquired firms, and ignoring the substantial competition between the acquiring firm and the sole customer of the acquired firm.

2. If so, whether the defendant met its burden for establishing a "failing company" defense to the Section 7 charge, where the acquired firm, at the time of the acquisition, (a) had operated for thirty years under an agreement with its sole customer, which it was in the process of renegotiating, (b) was pursuing expansion plans, (c) had consistently shown after-tax profits and paid large dividends and (d) had sought only one alternative purchaser.

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole

¹ See note 12, p. 22, *infra*.

or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

STATEMENT

A. INTRODUCTION

In January 1961 the United States filed a civil anti-trust suit charging that the acquisition in 1955 by Greater Buffalo Press, Inc. ("Greater Buffalo") of all the stock of International Color Printing Co. ("International") violated Section 7 of the Clayton Act. The complaint also alleged that Greater Buffalo, The Hearst Corporation ("Hearst"), acting through its unincorporated division King Features Syndicate ("King"), Newspaper Enterprise Association, Inc. ("N.E.A.") and a co-conspirator had conspired to restrain the sale to newspapers of printing of color comic supplements, in violation of Section 1 of the Sherman Act; that they had conspired to monopolize the sale and printing of those supplements, and that Greater Buffalo had monopolized such printing, in violation of Section 2 of the Sherman Act;^{1a} and that Hearst and N.E.A. were each parties to tying arrangements involving the licensing of comic features

^{1a} The government eliminated the monopolization charge against Greater Buffalo in its amended complaint filed in 1965.

and the sale of color comic supplements, which violated Section 3 of the Clayton Act.

In August 1965, before trial, a consent decree was entered against Hearst, enjoining King generally from entering into any agreement limiting competition in the printing of color comic supplements and from tying the licensing of its comic features with the sale of printing of comic supplements. Although the decree expressly permits King to quote a single price for the licensing of features and the sale of printing, it provides that if a Greater Buffalo plant is divested pursuant to a final judgment in this action, King would then be subject to certain requirements to ensure against tie-ins, including the requirement that it must quote separately its price for licensing and for printing. The decree further provides for the court's continuing jurisdiction over King for the purpose of providing such other relief as might be necessary to dissipate the effects of any antitrust violations which might be found against Greater Buffalo (Hearst Decree, paras. III (B) and (C)).

After a full trial on all the issues, the district court found against the government on all charges (App. A, *infra*), and entered judgment dismissing the complaint (App. B, *infra*).²

² No appeal is taken from the district court's dismissal of the complaint against N.E.A., or its dismissal of the conspiracy claims against Greater Buffalo. The facts relevant to these allegations will be discussed only insofar as they are necessary to an understanding of the circumstances surrounding the challenged acquisition. While we believe that the court below erred in these respects as well as in its disposition of the Section 7 claim, we have concluded that, because of changed

B. THE INDUSTRY AND THE PARTIES

The weekend editions of most newspapers contain the familiar color comic supplements, containing comics, advertising and other features. The rights to the individual comic features are generally controlled by syndicates. The price for such rights is negotiated between the syndicates and the newspapers, and the rights are granted on a regionally exclusive basis (T. 1105-1108, 1823-1825, 1848).³ In putting together a supplement, the newspaper may obtain features from different syndicate sources (T. 1108).

While obtaining feature rights for a supplement, the newspaper must simultaneously arrange for its printing. Comic supplement printing requires specially skilled personnel and specially adapted printing equipment. Although newspapers, at least the larger ones, are capable of printing their own supplements, most find that a better quality product can be obtained more economically from independent comic supplement printers (T. 798-801).

Newspapers which do not print their own supplements can have it done either by a syndicate which sells printing as an incident to its feature selling business (and, in turn, arranges with a comic supplement

circumstances since the complaint was filed and the essentially factual basis of the court's judgment on these other claims, they do not present substantial questions warranting further review.

³ In a group of cases filed while the instant case was under submission, *United State v. Chicago Tribune-New York News Syndicate*, *United States v. Field Enterprises, Inc.*, and *United States v. The Hearst Corporation*, Nos. 67 Civ. 4596-4598, S.D.N.Y., the government is challenging certain of these exclusivity provisions. The legality of such exclusivity was not involved in this case.

printer to do the actual printing) or directly by a comic supplement printer (T. 1599, 1798-99). In arranging for printing, the distance between the printer and the newspaper is a factor, since transportation costs are substantial (T. 802-03, 810).

At the time of its acquisition of International, Greater Buffalo was the most successful and efficient comic supplement printer, largely because of the technical and innovative skills of its president, Koessler. It owned no feature rights of its own, but did some printing for the feature syndicates, though most of its sales were direct to newspapers. In 1954, the last full year before the acquisition, Greater Buffalo had sales of about \$8.5 million (p. 138, para. 15). Its plants were then located in Buffalo and Dunkirk, New York, but it was in the advanced stages of planning for a new plant in Lufkin, Texas, intended to facilitate and increase sales to Southern newspapers. The Lufkin plant was opened in 1958 (p. 138, para. 20).

International was also a comic supplement printer, comparable in size to Greater Buffalo, but not as efficient (T. 1289; P-62). Its owners, the Govin family, had, after an initial loan to commence operations had been repaid, made no capital investment in the company (T. 1296-97) and consistently withdrew a large portion of the accumulated profits as dividends. The dividends continued to the date of acquisition as follows: \$44,700 in 1953, \$34,800 in 1954 and \$17,400 for the first six months of 1955 (P-141). Although claiming a working capital deficit at the end of 1954 of about \$100,000 (T. 1300), the

company showed a net profit for that year of \$11,000 (down from more than \$70,000 in each of the four prior years) and its net profit for the year in which it was acquired (during one-half of which the company was under the control of Greater Buffalo) increased to more than \$88,000 (P-141).

International, like Greater Buffalo, had annual sales of about \$8.5 million at the time of the acquisition (p-138, para. 15), but employed no sales force of its own as its sole source of business was King (T. 1284-1285). Since 1926, shortly after it was founded, International operated under long-term contracts under which King sold the printing to those newspapers which purchased comic features from King. The contract in effect in 1955 was cancellable upon six-months notice and permitted King to place 25 percent of its supplement printing with other printers (primarily on the West Coast) (P-1, p. 1).

International's plants were located in Wilkes-Barre, Pennsylvania, and Peoria, Illinois (P-138, par. 8), the latter plant having been closed since the acquisition. In mid-1954, International's board of directors, prodded by King's recognition of the competitive disadvantage it would suffer when Greater Buffalo opened its Texas plant, authorized its president, Gorman, to develop plans for its own southern facility to be financed either by a favorable renegotiation of the King contract or by negotiation of a loan (P-54). Although King and International experienced difficulties in negotiating a long-term contract (P-54; T. 1310-16) and loan negotiations were not extensively

pursued (T. 1312-13), plans for a southern plant, nevertheless, went forward. By January 1955, after extensive investigations, International had focused on Sylacauga, Alabama as a proposed site. Hearst, on behalf of King, entered into a ten-year contract to purchase newsprint from a newsprint company in that area, contingent upon construction by International of a plant there (P-56). Plans were drawn for such a plant (P-122), and by June 3, 1955, four weeks prior to the acquisition, Gorman was able to inform the Sylacauga Chamber of Commerce that "I can confidentially state that we are going to locate in Sylacauga * * *" (P-114).

King, the strongest syndicate controlling feature rights, is also the largest nonprinter selling supplement printing (P-1, p. 1, 2). In 1955, its sales of printing amounted to almost \$10 million, most of which was done by International. King does not sell printing merely as an adjunct to its features business; it has at all times sought to earn a satisfactory profit on its sales of printing as well as on its sales of feature rights.

Although some of Hearst's subsidiary newspapers print their own color supplements, Hearst does not print for King (P-62). Hearst has consistently maintained, as a matter of policy, that it is not interested in getting into the printing end of the business (T. 1303). Although Greater Buffalo contended that Hearst had substantial excess color supplement printing capacity (P-62), there was evidence that conversion of such facilities to make them significantly competitive with independent color printers in handling

King's requirements was not economically feasible (P-103, 105).

In 1955, the year of the acquisition, a total of about \$28 million worth of color comic supplement printing was sold to newspapers by printers and syndicates. While the record does not contain a precise breakdown of printing sales, a good picture of the relative strength of printers is given by the following breakdown by volume of printing (p-62; p-138, para. 18):

Comic Printer

Printing Volume
(In Terms of 4-Page Sections)

The International Color Printing Company, Wilkes-Barre, Pennsylvania	27, 237, 658
Greater Buffalo Press, Inc., Buffalo, New York	26, 843, 474
Acme Colorprint Company, San Bernardino, California	5, 001, 714
Eastern Color Printing Company, Waterbury, Connecticut	3, 681, 339
Southern Colorprint, Newport News, Virginia	477, 714
World Color Press, Inc., St. Louis, Missouri	753, 559
Buffalo Colorpress, Inc., Buffalo, New York	3, 289, 032
Fort Worth Star-Telegram, Fort Worth, Texas	1, 599, 556
Hearst Corporation	* 2, 956, 434

Thus Greater Buffalo and International (printing exclusively for King) together accounted for more than three-fourths of the printing done by comic supplement printers for sale to newspapers which did not do their own printing. Each did more than five times the volume of the next largest printer (Computed from P-62; P-1, P-3.)⁵

⁴ The figures included for Hearst and the Fort Worth Star-Telegram represent supplement printing done by them for other newspapers.

⁵ Exhibit P-62 was compiled by the government from figures derived from International's annual industry survey (P-61, 63, 138, par. 18). Greater Buffalo contended at trial that the relevant market should include printing done by newspapers for themselves (P-62). The government objected to such inclusion on the ground that while such papers might be potential customers for the independents, they were not competitors for the business of other newspapers. Even accepting the broadest market proposed by Greater Buffalo, its share combined with International's is nearly 42 percent (P-62, column 5).

C. THE ACQUISITION

Dissatisfied with profit levels and unwilling to make needed investments for modernization and expansion, International's owners had apparently considered selling the company for several years. King was offered an opportunity to buy in 1952; although Frank Nicht, King's chief executive officer, favored the idea, Hearst declined to negotiate "at any price" (T. 1301-1303). Late in 1954, Gorman, International's president, through Nicht, obtained an introduction to Koessler of Greater Buffalo (T. 1304). Koessler expressed an interest in acquiring International, and discussions quickly proceeded to negotiations over the fair market value of the company's stock (T. 1305-06).

The record discloses that Nicht kept himself well informed concerning the progress of these negotiations. On March 25, 1955, in a memorandum to his superior, he presented the possible sale of International to Greater Buffalo as one of three possibilities, the others being renegotiation of the King-International contract at rates sufficient to finance International's southern plant, or acquisition of International by King (P-21). Nicht advised:

The owners of International Color Printing Company are now quite definitely anxious to sell. *They can hardly sell without our consent and cooperation.* We have had many meetings among ourselves and with the representatives of ICP and Greater Buffalo Press. These meetings have up to this time involved the overall principles and not the many details.

The time has now come for us to decide what we want to do. If management prefers a carrying out of plan No. 3, I am prepared to proceed if given a green light. Even in this event, *there is a possibility of encountering opposition in the effort to protect the interests of KFS on every conceivable point under a long-term selling contract with the prospective owners.*

Greater Buffalo Press realizes they can hardly continue purchase plans without the approval of KFS and Greater Buffalo Press has indicated they would like to talk further with me about this quite conclusively next week. [Ibid., emphasis supplied]

On June 13, 1955, Koessler wrote Nicht a detailed, formal letter setting forth "the provisions on which we are in agreement" (P-16).^{*} These included, *inter alia*:

1) Greater Buffalo would purchase International and assume the long term printing agreement then being negotiated by International with King;

2) Greater Buffalo and King would each continue to hold its existing accounts;

3) With specified exceptions, Greater Buffalo would grant King exclusive sales rights on all new business; and

4) With one exception, King would give all its printing business to Greater Buffalo and International.

^{*} Koessler had sent Nicht a similar, less complete letter on June 2, setting forth "the points we discussed in New York, on which we agreed could go into a contract" (P-15).

The letter concluded: "This contract is to be for a period of ten years" (*Ibid.*).

On June 25, 1955, Greater Buffalo purchased International's stock for \$575,000. Later that summer, International and King signed a ten-year contract, effective July 30, at substantially the same rates provided for in their previous contract (P-23; T. 1320-21). Eventually, in 1958, a contract designating King as Greater Buffalo's sales agent was executed by Koessler and Nicht, but not approved by the board of directors of either company, and never became formally effective. Notwithstanding Koessler's "understanding" with Nicht, Greater Buffalo, since the acquisition, while continuing to do most of King's printing, has taken substantial sales accounts from King (P-70).

After the acquisition, International, with financial support from Greater Buffalo, concluded arrangements for construction of a new plant in Sylacauga. The plant was opened in 1963 and is operated by Dixie Color Printing, a wholly owned subsidiary of Greater Buffalo (P-138, para. 21).

D. THE COURT'S DECISION

The district court rejected the government's contention that the acquisition violated Section 7 of the Clayton Act on two principal grounds. First, it found that the printing of color comic supplements directly for newspapers was a different market than the printing of such supplements for syndicates engaged in the sale of both features and comic supplement printing

to newspapers. It reasoned that to treat them as a single market would be to ignore "the tremendous leverage" which control of features affords the syndicates in selling such printing to newspapers (App. A, *infra*, p. 30). Having so defined the markets, the court found that Greater Buffalo and International had not been engaged in competition before the acquisition, since International printed solely for a syndicate, King (*Id.*, p. 36).

Although the court expressly found that "Greater Buffalo and King engaged in active competition for the business of printing color comic supplements" (*Id.*, p. 31), it made no attempt to assess the impact of the acquisition on that competition. It found that at the time of the acquisition, there was no agreement, either between King and Greater Buffalo or King and International, for a new printing contract for King's business. It concluded, therefore, that in acquiring International, Greater Buffalo simply took a calculated risk that it could obtain King's printing, and did not obtain by the acquisition itself a further share of the printing market (*Id.*, pp. 37-38).

Second, the court found that International, at the time of the acquisition, was a failing company (*Id.*, pp. 36-37). Its basis for this conclusion was that King, International's sole source of business, had been placing some business elsewhere and was threatening to increase this practice (which it could do by making use of the six-month cancellation clause in the contract) unless International built a southern plant. The court found that International lacked financing

for necessary expansion and modernization since it had a working capital deficit, its owners were unwilling to invest capital, and King was unwilling to enter into a new long-term contract at higher rates. Noting that King had refused to buy International, the court found that there was no other prospective buyer. The court also found that International became a healthy and profitable company after the acquisition because of technological improvements made possible by Greater Buffalo (*Id.*, p. 38).

Finally, the court suggested that even if there was a violation it was "insufficient to warrant a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct" (*Ibid.*).⁷

THE QUESTIONS ARE SUBSTANTIAL

The effect of Greater Buffalo's acquisition of International was that the largest and most efficient integrated printer-seller of color comic supplements obtained approximately three-quarters of the industry's printing capacity, and also obtained the capacity and contract right to perform most of the printing for its leading sales competitor. In holding that this acquisi-

⁷ In a concluding footnote, the court indicated its view that the real offender in the case was King. It observed that the evidence strongly suggested that King had utilized unlawful tie-in practices to restrict competition with Greater Buffalo in the sale of printing. The court pointed out, however, that it was without power to impose further relief against King, under the consent judgment entered against it, in the absence of a finding of violation of any antitrust law by Greater Buffalo (*Id.*, p. 41, n. 4).

tion did not violate Section 7 of the Clayton Act, the court defined the relevant product market in a narrow and artificial manner, considering only sales competition between the acquiring and acquired firms, while ignoring the substantial competition for sales of color comic supplement printing to newspapers between the acquiring firm and the sole customer of the acquired firm. It also upheld a failing company defense which did not satisfy the standards this Court has announced for that defense.

Because market definition is so important to Section 7 analysis, and the failing company defense is frequently invoked, this decision, if permitted to stand, is likely to have a seriously adverse effect on the government's efforts to enforce the antimerger statute. Moreover, only a finding of a Section 7 violation, implemented by an effective divestiture decree, offers hope for the restoration of meaningful competition in the color comic supplement printing industry. A divestiture order will also trigger the provision of the Hearst consent decree empowering the court to require King to quote separately its prices for feature rights and printing, thus effectively preventing anti-competitive tying agreements.⁸

⁸ The government agreed to the somewhat unusual conditional decree against Hearst in recognition of existing competitive realities. So long as Greater Buffalo controls King's printing, as a result of the International acquisition, a requirement that King quote a separate price for printing would substantially eliminate any ability King now retains to compete effectively for color supplement printing sales.

1. The relevant product market in Section 7 cases is determined by the nature of the commercial entities involved and the competition they face. *United States v. Phillipsburg National Bank*, 399 U.S. 350, 360; *United States v. Continental Can Co.*, 378 U.S. 441, 456-457. Color comic supplement printers produce their product for sale to newspapers which do not print their own comic supplements. Whether a printer sells his own product directly to newspapers, as Greater Buffalo did, or to a nonprinter seller for resale to newspapers, under an arrangement such as International had with King, the end-use of the product and the ultimate customers are the same. Greater Buffalo competed for printing sales with the International-King combination. The court below, by treating sales to syndicates as a different market from sales to newspapers, has confused distribution systems with markets, ignoring the realities of competition in the industry and between Greater Buffalo and International-King.

The court's conclusion that ownership of features rights gives syndicates such leverage over sales as to make syndicate selling of printing a separate market is refuted by its own express finding that King and Greater Buffalo were active competitors for the business of selling color comic supplement printing. In any event, "submarkets are not a basis for the disregard of a broader line of commerce that has economic significance." *United States v. Phillipsburg National Bank*, *supra*, 399 U.S. at 360. The line of commerce that is economically relevant to this case is

the sale of color supplement printing to newspapers which do not print their own supplements. In that line of commerce, Greater Buffalo, on the one hand, and International-King, on the other, were the leading competitors at the time of the acquisition.

The court's line-of-commerce error led it into the further error of analyzing the competitive effects of the acquisition solely in terms of competition between Greater Buffalo and International. It is, of course, well-settled that the competition which Section 7 seeks to preserve is not merely that between the acquiring and acquired firms. *Brown Shoe Co. v. United States*, 370 U.S. 284. In this case the competition most substantially and dramatically lessened by the acquisition was competition between Greater Buffalo and King in the sale of comic supplement printing.⁹ In acquiring International, Greater Buffalo not only obtained control of some 75 percent of color comic supplement printing (see p. 9, *supra*), but also gained the almost certain right to print for King, its principal selling competitor.¹⁰

⁹ Paragraph 27 of the amended complaint, charging a Section 7 violation, alleged that competition between Greater Buffalo and King was eliminated. Paragraph 30(d), however, which described the effects of all the violations charged, alleged more generally that "competition in the printing and sale of color comic supplements has been suppressed." The government's trial brief emphasized the "combined printing and selling of supplements" as an appropriate line of commerce, and the lessening of competition between Greater Buffalo and King (Plaintiff's Post-Trial Brief, pp. 6-14, 17).

¹⁰ The court found that Greater Buffalo, in acquiring King, did not acquire an additional share of the market because it had no assurance that King would continue to do business with

As a result of the acquisition, King has become dependent upon Greater Buffalo for most of the printing which it attempts to sell in competition with Greater Buffalo, and price competition between the two necessarily has been restricted. King, seeking a profit from printing sales, obviously cannot quote a price below that which it pays Greater Buffalo for printing; Greater Buffalo, in seeking to take accounts from King, has no incentive to bid below the price King pays it for the work. It is no answer that Greater Buffalo has taken accounts from King since the acquisition; existing competition between them, effectively restricted to sales at a price higher than Greater Buffalo charges King for printing, is not the fuller competition that could exist if King had an independent printing source. Cf. *United States v. Container Corp.*, 393 U.S. 333, 337. It can hardly be supposed that either would be inclined to compete so vigorously with the other as to jeopardize a mutually valuable customer-supplier relationship.

2. An acquisition which would otherwise violate Section 7 may be permitted if the acquired firm is a "failing company," that is, if its resources were so depleted at the time of acquisition and its prospects for rehabilitation so remote that "it faced the grave

International. While Greater Buffalo may not have had a legally enforceable right to King's business following the acquisition, it certainly—in view of Koessler's letter to Nicht memorializing an agreement that Greater Buffalo would assume the new contract then under negotiation between International and King (P-16)—had very high and justifiable hopes at the time of the acquisition of obtaining King's business.

probability of a business failure," and if there was no other prospective purchaser for it. *International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291; *United States v. Diebold, Inc.*, 369 U.S. 654, 655. The failing company defense in this case met neither requirement.

a. The district court concluded that International was failing at the time of its acquisition because it had a working capital deficit, its owners wished to sell rather than make the capital investment necessary to permit modernization and expansion, financing of such expansion had not been obtained from other sources, and King, its sole customer, was threatening to place some of its business elsewhere (App. A, *infra*, pp. 36-37). The court, however, ignored the consistent profitability of the company (including a substantial increase in profits in the year of the sale), and its continued ability to pay substantial dividends to its owners (P-141). Notwithstanding some technological obsolescence, International was the largest volume printer of color supplements (P-62) and King had not invoked or threatened to invoke the six-month cancellation provision in its contract. Moreover, expansion plans were being actively pursued even with assured financing (see pp. 7-8, *supra*).

This is scarcely the picture of a business facing imminent collapse. There is little doubt that International's growth and development had stagnated by reason of the owners' insistence on high dividends to the exclusion of reinvestment of profits, and that the

owners preferred a profitable sale to the commitment of capital for needed expansion and modernization. But it is equally clear that this still-profitable concern was an important competitive force in color supplement printing, performing vital services for its sole customer, King. Compare *United States v. Third Nat'l Bank of Nashville*, 390 U.S. 171, 175-176, 183.

Indeed, International's failure was hardly possible so long as King remained dependent upon International for printing, and had the power to prevent it. For nearly 30 years, King had relied upon International to print substantially all the color supplements it sold. Nicht's contemporaneous memoranda make clear that King followed closely the Greater Buffalo-International negotiations; the acquisition was not consummated until Nicht had a written commitment from Koessler that Greater Buffalo would continue to print for King, and King's market position would be maintained (P-21, 23, 15, 16).¹¹ Until such assurance was given, Nicht still considered either acquisition by King or renegotiation of the printing

¹¹ The district court did not view the Koessler letters as evidence of conspiracy between Greater Buffalo and King, apparently on the ground that Koessler was actually misleading Nicht as to his intentions to reach an agreement. (App. A, *infra*, p. 32). But for present purposes that consideration is irrelevant, since King, relying on Koessler's promises, obviously believed that its interests were protected in the Greater Buffalo acquisition, and therefore was not required to undertake other steps to finance the expansion of International.

contract at rates adequate to finance International's southern expansion as viable alternatives (P-21). Plainly King was in no position to permit any disposition of International which did not protect its long-term interests; it is simply not believable that in those circumstances it could or would have permitted International to fail.

b. In any event, the failing company defense is inapplicable unless the acquiring company is "the only available purchaser". *Citizen Pub. Co. v. United States*, 394 U.S. 131, 138. King is the only prospective purchaser, other than Greater Buffalo, to which International was ever offered. But there are numerous smaller color printers in the industry and acquisition by any one of them would have been substantially less anticompetitive (P-62). Nothing in the record indicates that these firms, or any others, were approached by International. Indeed, although the owners were apparently willing to sell as early as 1952 (T. 1301-03), there is nothing to show that International's availability was even made known generally to the trade. In these circumstances, there was no basis for the district court's finding that "no other person or corporation was interested in acquiring International * * *." (App. A, *infra*, p. 37). The finding reflects an erroneous legal standard of what the defense requires (see *Nashville Bank, supra*)—a defense that has a "narrow scope" (*Citizen Pub. Co., supra*).

The burden of establishing the failing company defense "is on those who seek refuge under it." *Citizen Pub. Co., supra*, at 138-139. Greater Buffalo did not satisfy that burden.

CONCLUSION

The questions presented are substantial, and of public importance in the enforcement of the antitrust laws. Probable jurisdiction should be noted.¹²

Respectfully submitted.

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¹² If probable jurisdiction is noted, we reserve the right to argue (1) that the effect of the acquisition by Greater Buffalo of International may be substantially to lessen competition in the sale of color comic supplement printing and (2) that proper relief for the cure of that violation requires divestiture.

APPENDIX A

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK

(Civil 9004)

UNITED STATES OF AMERICA, PLAINTIFF

v.

GREATER BUFFALO PRESS, INC., ET AL., DEFENDANTS

FINDINGS OF FACT

This action arises out of a complaint filed by the government in January 1961, charging certain defendants with violations of the Sherman and Clayton Acts. The complaint charged that Greater Buffalo Press, Inc. (hereinafter Greater Buffalo) engaged in a conspiracy with the Hearst Corporation (hereinafter Hearst) and Newspaper Enterprise Association, Inc. (hereinafter NEA) to restrain interstate commerce in the sale of color comic supplements by refraining from soliciting printing business from each other's customers and by maintaining and stabilizing the price of color comic supplement printing in violation of section 1 of the Sherman Act. The complaint also charged the same defendants with engaging in a conspiracy to monopolize color comic supplements in violation of section 2 of the Sherman Act, and Greater Buffalo is charged with violation of section 7 of the Clayton Act (15 U.S.C. § 18) regarding its 1955 acquisition of the outstanding stock of defendant Interna-

(23)

tional Color Printing Corporation (hereinafter International), since it is alleged that the acquisition constitutes a substantial lessening of competition and tends to create a monopoly with regard to color comic printing in the United States. Lastly, the defendants Hearst and NEA were charged with violation of section 3 of the Clayton Act (15 U.S.C. § 14), for allegedly selling comic features to newspapers at discounts on the condition that the newspaper purchasers shall not deal in comic printing services sold by their competitors. The litigation arises out of a claim filed with the Department of Justice on behalf of Atlantic Features that King Features was combining the licensing of its copyrighted features with the sale of the printing of the color comics in violation of the antitrust law.

After the complaint was filed, the defendant Hearst entered into a consent decree with the Department of Justice which in effect withdrew the charges against Hearst and provided that King Features may continue to engage in the practice of combining the sale of features and printing *until the court shall determine the antitrust issue as to Greater Buffalo*. The decree also provided that Hearst shall obey the antitrust laws during the pendency of the action. No reason has even been presented by the Department of Justice to explain the significant change of heart toward the defendant Hearst. Any attempt by the court to explain the conduct would be inappropriate in view of the court's lack of knowledge of the facts and circumstances surrounding that decision.

After the entry of the consent decree and prior to the taking of testimony, the government amended its original complaint by striking the allegation of monopoly against Greater Buffalo. There remain, therefore, conspiracy charges against NEA and

Greater Buffalo under sections 1 and 2 of the Sherman Act, an alleged violation of section 7 against Greater Buffalo arising out of the International acquisition, and a violation of section 3 of the Clayton Act against NEA regarding tie-ins.

Greater Buffalo is a New York corporation with facilities in Buffalo and Batavia and is in the business of commercial printing, including color supplements and color comic supplements for insertion in newspapers, and is engaged in the production of goods for shipment in interstate commerce. Southwest Color Printing Corporation (hereinafter Southwest Color) is a Texas corporation, having its principal place of business in Lufkin, Texas. Dixie Color Printing Corporation (hereinafter Dixie Color) is an Alabama corporation with its principal place of business and facilities at Sylacauga, Alabama. Both Southwest Color and Dixie Color are wholly owned subsidiaries of Greater Buffalo.

International is a Pennsylvania corporation, having its principal place of business and facilities at Wilkes-Barre, Pennsylvania. Prior to June 1955, its sole business consisted of the printing of color comic supplements for the account of King Features Syndicate (hereinafter King), a division of Hearst. Greater Buffalo acquired all of the common capital stock on June 25, 1955, and since that time it has been engaged in the printing of color comic supplements for the account of King and both color comic supplements and commercial printing on contracts held by Greater Buffalo.

NEA is a Delaware corporation, with its principal place of business at Cleveland, Ohio, engaging in the business of licensing copyrighted newspaper features, including color comic features, to newspapers, and selling color comic supplement printing of copyrighted

comic features to newspapers. Prior to 1955, NEA owned the stock of Buffalo Color Press, Inc. which owned and operated printing facilities in Buffalo, New York, and printed color comic supplements for NEA and one other newspaper. In 1955, its assets were sold to Greater Buffalo. Apart from its connection with Buffalo Color Press, NEA is not engaged in printing color comic supplements, but subcontracts such printing to other printers.

The Hearst Corporation is a Delaware Corporation with its principal place of business in the City of New York. It is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers through its New York division, King. It has also been engaged in the business of selling color comic supplement printing of copyrighted comic features to newspapers.

THE INDUSTRY

Color comic supplements are newsprint printed with colored ink containing reproductions of copyrighted color comic features, advertising material and other types of features. Each supplement page receives four impressions of ink which requires an exacting job of alignment and adjustment for each impression. A great deal of skill and expertise is necessary to be proficient in the printing of such supplements, and the higher the degree of skill, the finer the end product and more desirable the supplement in appearance and readability. Necessary to this process is the use of skilled personnel and stereotype equipment and other machinery.

Some newspapers print their own comic supplements. Many more are printed by color comic printing companies. The newspapers which do not print their own color comic supplements are capable of do-

ing so but have found it to be to their economic advantage to purchase them. There is every reason to believe that if at any time the cost of purchasing such color comic supplements exceeds the cost to the newspaper of printing them, the newspapers will do the printing themselves.

There are, therefore, three ways which a newspaper can obtain color comic supplements (hereinafter supplements):

1. Print its own supplements;
2. Contract directly with color comic printers; and
3. Contract with concerns which do not themselves print the supplements, but have arrangements with printers to print such supplements and deliver the same to newspapers.

Contemporaneously with contracting for the purchase of supplements, newspapers contract for the purchase of rights to the copyrighted comic features which appear in such supplements and, in general, the fees charged for the licensing of features are not pursuant to published price lists, but are arrived at after bargaining negotiations between the newspaper and the licensor. In attempting to obtain specific features, a newspaper is limited to those which are not already licensed under an exclusive arrangement with other newspapers in competition with it.¹

¹ The court takes judicial notice of the fact that, after the closing of testimony in this case, the Department of Justice filed a complaint in the United States District Court for the Southern District of New York in an action entitled "United States of America v. The Hearst Corporation" No. 67 Civ. 4598, which charges the Hearst Corporation with a violation of section 1 of the Sherman Act in that for the past many years it has entered into contracts through its King Features Syndicate Division with newspapers for the exclusive licensing of the features within an arbitrary and unreasonably broad territory surrounding the newspaper's city of publication.

For the past many years and continuing to this day, King has ruled the licensing portion of the color comic supplement industry. It controls the licensing of at least fifty copyrighted comic features, including the most popular comic features which are used by major metropolitan newspapers. Moreover, other features such as the writing of columns, which are essential to the circulation of large metropolitan newspapers, are controlled by King. Prior to 1955, King exercised dominant control over the printing of color supplements but since that time its position in the sale of printed supplements has been challenged by independent printers as well as syndicates.

Since approximately 1926, until very recently, Greater Buffalo has been owned, operated and controlled by Walter Koessler, now deceased, together with his brother Kenneth and other members of his family. The growth of the company has been financed entirely out of earnings derived from the business. During this entire period of time, the business has grown and become a model of efficiency in the industry. This is due to the fact that Mr. Koessler personally developed the mechanical techniques for the rebuilding of color printing presses, including the system of pre-registry, which resulted in greatly increased efficiency in the operation of such presses and improvement in the quality of the product at reduced cost in printing. Walter Koessler was a mechanical genius. The improvements developed by him in the printing of color comics, although not protected by patents, have not been duplicated by any manufacturer of printing presses or any other printers and because of this Greater Buffalo has alone been able to make great strides in improving color printing presses. As a result, Greater Buffalo has at all

times enjoyed a distinct competitive advantage over other printers which is a result of the skill, diligence and efficiency of Walter Koessler and not the result of any illegal agreement or design to violate any provisions of federal law. The competitive advantage enjoyed by Greater Buffalo continues to this day. Greater Buffalo, as compared with King, has no control over the ownership of features and has never engaged in their licensing. Consequently, it has never been in a position to offer the smaller newspaper a so-called "ready-print" supplement section, which is a pre-printed supplement section supplied to many newspapers with only masthead changes, thereby sharing the printing among a number of newspapers which, because of the longer runs of this type of supplement, reduces to the individual newspaper the unit cost of such supplements. Both King and NEA are extensively engaged in this type of ready-print section. In recent years Greater Buffalo has obtained many contracts for the printing of color comic supplements solely by reason of its lower prices and the quality of its work. These contracts have come principally from newspapers previously engaged in printing their own supplements. The contracts provide for printing at uniform rates subject to cancellation by either party on ninety days' notice. They also provide that the transportation charges will be paid by the newspapers.

Prior to 1955 and to this day, all of the following companies, among others, have been and still are in competition with Greater Buffalo in the printing of color comic supplements, as well as the sale of such printing to newspapers and syndicates: Acme Color Printing Company, Eastern Color Printing Company, Star Color Printing Company, Southern Color Print-

ing Company, World Color Printing Company. There has been no evidence presented to this court which would support a conclusion that Greater Buffalo controlled such a share of the market as would tend to create a monopoly or monopoly power. In recent years the color comic supplement industry has suffered from the competition of television; the substitution of other types of supplements, such as TV Topics, printed by the newspapers themselves; and the discontinuance of the publication of large numbers of newspapers. It is not a growing industry. The discontinuance of newspapers has resulted in a surplus of printing facilities and equipment, and this, together with the existing facilities of modern newspaper plants adaptable to the printing of color comic supplements, has minimized the barriers to entry into the color comic supplement printing industry.

Examining all the testimony and the relations between the parties, the court finds that the significant lines of commerce involved in this action should be divided into two distinct and separate categories: (1) the printing of color comic supplements for newspapers which do not print their own, and (2) the printing of color comic supplements for syndicates engaged in the sale of copyrighted comic features to newspapers. These are the lines of commerce—to treat them together as one line of commerce, i.e., the printing and sale of color comic supplements, would be to ignore the tremendous leverage of the syndicates which control the copyrighted features. The testimony of Walter Koessler and other witnesses in this case has established firmly that the syndicates, and in particular King, have a unique position by virtue of the legal monopoly which they have over the copyrighted features. The court is of the opinion that the peculiar

characteristics and business uses of copyrighted features justify considering printing for syndicates as a separate product market. See *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 325 (1961).

THE CHARGES OF THE COMPLAINT

The evidence² indicates that Greater Buffalo and King engaged in active competition for the business of printing color comic supplements. Because of King's control over licensing of both comic and gen-

² During this trial, the court reserved decision concerning the admissibility into evidence of certain documents offered on behalf of the government. In general, these documents are memoranda circulated between executives of King and, in some cases, are personal memoranda of Mr. Nicht of King. Some of these documents have been offered on the theory that they embody statements of co-conspirators made in furtherance of and in the course of the conspiracy. Mindful that there must be independent evidence that the alleged co-conspirator was a member of a conspiracy before statements in furtherance thereof are admissible, and viewing the evidence in the light most favorable to the government—and viewing only the government's evidence, the court finds sufficient evidence to infer the alleged membership in the conspiracy which warrants the allowance of these documents into evidence. Greater Buffalo strenuously objects to the admission into evidence of both the memoranda of Nicht to his superiors and his memoranda for his personal files. Since these memoranda in the main concern events testified to by Koessler or verified as to substantial accuracy by Koessler, or in some instances concern subjects about which Greater Buffalo has offered similar exhibits (P-77-P-88) (Tr. pp. 1008-1010), the court admits those documents into evidence as being of some probative value concerning the state of mind of Nicht at the time the events took place. Cf. *United States v. Corn Products Refining Co.*, 234 Fed. 964-978 (S.D.N.Y. 1916), appeal dismissed on stipulation, 249 U.S. 621 (1918). See also *United States v. United Shoe Machinery*, 89 F. Supp. 349, 355 (D.C. Mass. 1950).

eral features, Greater Buffalo has been at a disadvantage in meeting King's competition. In certain instances, such as the Waterloo, Iowa, incident, the power of King to withhold the licensing of comic features to newspapers, to which Greater Buffalo was supplying the color comic supplements, required Greater Buffalo to make weekly payments to King to satisfy demands of Nicht, the chief executive officer of King. These payments were not made as the result of any agreement between Greater Buffalo and King with respect to the division or allocation of business or customers. Moreover, in some instances the newspapers themselves decided to split contracts between King and Greater Buffalo because of transportation savings which could be realized. Specifically, this was done by the Gannett papers for the Utica and Binghamton papers. Evidence that a customer has elected to divide his business for economic reasons does not establish an agreement between King and Greater Buffalo to allocate customers between them.

Between 1955 and 1958, Nicht attempted to secure an agreement restricting competition between King and Greater Buffalo. Koessler, knowing King's dominant position and its power over Greater Buffalo's customers, led Nicht to believe that Greater Buffalo was willing to negotiate such an agreement but, since Koessler was aware that such an agreement would be detrimental to Greater Buffalo, no agreement was ever reached with respect to monopolizing the printing and sale of color comic supplements, fixing prices, or allocating customers. Prior to 1955 and continuing to date, Greater Buffalo has competed with King and has obtained contracts from newspapers for printing formerly under contract with King and has been and still is in competition with NEA for the printing of

color comic supplements. Greater Buffalo's competition with NEA has been restricted, since Greater Buffalo has not been and is not engaged in the sale of ready-print sections which is NEA's principal source of business. The acquisition of the assets of Buffalo Color Press, Inc., a NEA subsidiary, by Greater Buffalo in 1955 has not affected the competition between NEA and Greater Buffalo, nor has the contract between the two for the printing of color comic supplements by Greater Buffalo for the account of NEA. Moreover, during this time King and NEA engaged in competition for the licensing of color comic printing and color comic features and the printing of color comic supplements. Greater Buffalo, printing for both concerns, received complaints from each with respect to the competition of the other and attempted to mediate such complaints. However, at no time did Greater Buffalo enter into an agreement or understanding with either with respect to allocation of customers or solicitation of each other's accounts.

Since Greater Buffalo's contracts with newspapers provided that transportation costs would be paid by the newspaper, Greater Buffalo has for many years attempted to locate and had made plans for the construction of printing plants in the deep south and southwest. This was both to accomodate its existing customers in those areas by providing lower unit cost per color comic supplement by cutting transportation costs and also to obtain new customers in these areas by providing a higher quality product at a lower unit cost. In furtherance of this policy, a printing plant was constructed in the early 1950's in Lufkin, Texas, by Southwest Color. The construction and operation of this plant was undertaken and financed

entirely by Greater Buffalo, and its establishment has resulted in transportation savings to newspapers in the southwest. Some printing business subcontracted by King for printing at the Lufkin plant since 1958 has been done pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Lufkin printing. The subcontracting by King affords an economic advantage to King and its customers and is not in any way dependent or contingent upon any overall agreement between King and Greater Buffalo. The operation of the Lufkin plant by Southwest Color under the direction and control of Greater Buffalo has not restrained competition in the color comic printing industry, nor has it disadvantaged any other company in the industry or tended to create a monopoly.

The establishment of a printing plant at Sylacauga by Dixie Color was in execution of plans made by Greater Buffalo in 1947 and a commitment made in 1950 to its customers in the area. Construction and operation of the plant were undertaken and financed entirely by Greater Buffalo without any contribution by any other company in the industry. The establishment of that plant has effected transportation savings to newspapers in the south and preserved competitive prices in the area over the period since its construction.

The printing business placed by King for printing at the Sylacauga plant since 1963 has been produced pursuant to an arrangement between King and Greater Buffalo on the same price schedules which are available to other customers of Greater Buffalo for Sylacauga printing and are entirely different than the price schedules that prevail for the printing of King

Contracts at International. The printing business subcontract for printing at Sylacauga offers an economic advantage to King and its customers and is not in any way dependent upon any overall agreement between King and Greater Buffalo.

International had previously investigated construction of a plant at Sylacauga and had entered into negotiations with civic groups for a plant site and with the Coosa River Paper Company for a supply of newsprint, but it had never entered into any commitment to construct such a plant because it had no means of financing it. From the evidence it appears that the major stockholders of International were in no way desirous of investing further capital for the establishment of such an operation. The civic groups and the newsprint supplier were willing to transact business with any corporation prepared to finance and construct a plant. Although Greater Buffalo may have utilized to some degree the services of International officers after its acquisition of International, the funds advanced were from earnings generated by the innovations and improvements made by Greater Buffalo in the Wilkes-Barre plant. The advances were repaid prior to the time any claim was made by the government that the Sylacauga plant was an asset of International. Construction and equipment of the Sylacauga plant were carried out at the direction of Greater Buffalo and were in no way dependent on the services of International or any of its officers or personnel. At the time its construction was undertaken, Greater Buffalo had contracts with newspapers in that area, and its construction constituted a calculated business risk which Greater Buffalo alone was willing to undertake because of the supply of newsprint and the certainty of effecting transporta-

tion savings for Greater Buffalo newspapers in that area. The operation of that plant by Dixie Color has not restrained competition in the industry or tended to create a monopoly.

THE ACQUISITION OF INTERNATIONAL

Greater Buffalo and International have never been engaged in competition for the sale of color comic supplements to newspapers, since International has neither solicited nor held contracts with any newspapers. International's business was solely the printing of color comics for syndicates engaged in the sale of copyrighted comic features to newspapers. The acquisition by Greater Buffalo of International in 1955 was not the result of any agreement between King and Greater Buffalo and was neither suggested, aided or abetted by King or any of its officers or employees.

In 1955, at the time of its acquisition by Greater Buffalo, the resources of International were depleted to the extent that it had a deficit in working capital of \$100,000. It had no means of securing financing for the construction of a southern printing plant and no means of moderizing its equipment. The owners of the corporation were anxious to sell the company and were continually demanding dividends in excess of the company's earnings. The owners were unwilling to invest capital toward expanding the operation of International or in any way investing in its development. The company's only customer (King) was placing some of its business with other printers, was threatening to take away more business, and was insisting on the construction of a substitute plant. The company's contract with King was cancellable on six months' notice, and it had been unable to negotiate a

new long-term contract at rates sufficient to enable it to finance improvements to other facilities and the construction of a southern plant. The company's resources were so depleted, and the prospect of its rehabilitation was so remote, that it faced the grave probability of a business failure. No other person or corporation was interested in purchasing International which was a failing company. Indeed, prior to its acquisition by Greater Buffalo, International had been offered to King, but King refused to negotiate for the purchase of the company at any price. Under these circumstances, in the light of its unwillingness to enter into a long-term contract with International at increased rates, there was nothing King could do to impede or prevent the sale of International to Greater Buffalo.

The acquisition of International by Greater Buffalo in 1955, had no reasonable probability of substantially lessening competition in the color comic supplement industry because International had no share of the market of printing color comics for newspapers and its failing financial condition foreclosed the possibility of its obtaining a share of the market and competing with Greater Buffalo. The business of King was in no way dependent upon International, since King had access to the printing facilities of Hearst and the facilities of independent printers.

At the time Greater Buffalo purchased International, there was no agreement between King and Greater Buffalo or King and International for a long-term contract, and Greater Buffalo undertook the calculated business risk of operating International without such a contract in the belief that by the installation of its more efficient methods, it could effect savings in cost for International sufficient to attract

the business of newspapers, as well as the syndicates, including King and NEA. Greater Buffalo did not acquire any additional share of the market of those engaged in printing color comics for newspapers which did not print their own by acquiring International.

Although, after the acquisition, International negotiated a long-term contract with King at substantially the same rates that had prevailed in its previous contract, that contract was not conditioned upon the acquisition of International by Greater Buffalo. The contract was negotiated by Gorman with little or no direction by Greater Buffalo. The court finds that after the acquisition Greater Buffalo vastly improved the facilities of the International plant by installing its improved methods of color printing. As a consequence of the improved methods and engineering skills of Mr. Koessler, International has operated at a profit since the acquisition and is a healthy economic unit. The acquisition by Greater Buffalo of International and its operation by Greater Buffalo over the past fifteen years have not resulted in the lessening of competition in the color comic supplement industry and, in fact, competition between Greater Buffalo, King, NEA, Southern, Acme, Eastern and the other companies engaged in the industry, has increased. Indeed, from all the evidence, it appears that the companies across the country have benefited, and that competition prevails in the industry unfettered by any agreement by any of the principals in this case.

In short, the evidence fails to factually establish the violations charged against the defendants. What meagre evidence there is which points to alleged violations would, even if highly credited, be insufficient to warrant a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct.

NEA AND THE ALLEGED TIE-INS CLAIMED TO HAVE
VIOLATED SECTION 3 OF THE CLAYTON ACT

The government also charges that certain syndicates have illegally used the copyrighted comics by tying in the license to use the comics with the contract for printing the supplements. Newspaper Enterprise Association, Inc. is charged in paragraph 28 of the amended complaint with violating section 3 of the Clayton Act.³ Although the court is of the opinion that, if proven, any agreement resulting in such a transaction as alleged would be a sale or contract for sale of goods or commodities encompassed within the purview of section 3, the court believes that the proof offered in this case would not support a finding of such an illegal tie-in.

The testimony and exhibits relied upon by the government in one portion of its tie-in proof, namely P-142 through P-146 and P-152 and P-153, concern negotiations which did not result in contracts with NEA for ready-print. Therefore, any price differentials which may have been reflected during these ne-

³ "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." 15 U.S.C. § 14 (1914).

gotiations could not support a finding of a violation of section 3, but could only be used as corroborating other evidence of tie-ins. *United States v. Loew's, Inc.*, 189 F. Supp. 373, 380 (S.D.N.Y. 1960), modified on other grounds, 371 U.S. 38 (1962). Furthermore, exhibits P-149, 150 and 151 are evidence that NEA on one occasion reduced the price of the ready-print to a publisher who subscribed to its intermediate service, showing only that if a tie-in existed, it would be of printing to the intermediate service—not to copyrighted comic features. Other proof indicated that NEA refused Mr. Hornady permission to sell NEA comics as its agent because he was the representative of three of NEA's competitors, a decision which seems eminently sensible. The government also points to a situation wherein NEA "threw in Oop" to meet competition on its contract with Ponca Oklahoma City News. Although a consummate transaction, the government failed to prove that this had a conditioning effect, and the evidence shows that Oop (Alley Oop) was already included in its make-ready. Its effect was beneficial to both the newspaper and NEA. Moreover, the evidence on all of the transactions offered in support of the tie-in charges indicates that price differentials which may exist are legitimately justified by cost considerations. In reaching this conclusion, the court has closely examined the proof concerning the ready-print process. The inclusion in ready-print of certain comics selected by NEA, which can be sold as a unit to many newspapers throughout the country, results in a spreading of fixed costs overall to newspaper customers and an economic advantage to NEA of a lower unit price than could be charged profitably if each supplement was printed separately for each newspaper. The court has also considered evidence tending to show that if any newspaper decides not to

buy the printing from NEA but wants any NEA comics, those comics are sold to the newspaper at the fair market price. Since a newspaper, in purchasing the ready-print, is limited to those features which NEA has previously selected and included in the ready-print, the price differential is justified by cost considerations and benefits to both the newspaper and NEA. The court, therefore, finds that the government has failed to prove the violation of section 3 of the Clayton Act regarding Newspaper Enterprise Association, Inc. regarding alleged tie-ins.⁴

⁴This is not to conclude that the tie-in practice is not engaged in by certain syndicates controlling the licensing of color comics. The testimony at the trial of Mr. Koessler and others indicates that King Features had for a long period of time engaged in tie-in practices, and that such tie-ins seriously affected competition between Greater Buffalo and King. In fairness, it should be pointed out that King Features was not represented by counsel during these proceedings, did not cross-examine any witnesses regarding King's alleged tie-in practices, did not present evidence on its own behalf, or in any way take part in the trial, having previously agreed to a consent decree entered on the 31st day of August 1965. The terms of that decree provided in part: "V(B). Notwithstanding the making and entry of this final judgment, the plaintiff may, *if the court adjudicates that the defendant, Greater Buffalo, has violated any of the antitrust laws as charged in the complaint filed herein, seek, and the court may order, such other relief as to the consenting defendant as the court may deem necessary and appropriate to dissipate the effects of the unlawful activities that may be found by the court, and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements . . .*" [Emphasis added.] Since the court, as outlined in this memorandum, has not found the defendant Greater Buffalo violated any of the antitrust laws as charged, the court has no power under the terms of the judgment entered August 31, 1965, to enjoin the defendant Hearst from engaging in any tie-in practice which may be revealed by the evidence.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter of this action between the parties.

2. Greater Buffalo and NEA have not engaged in any competition and conspiracy with Hearst or each other or any other person or corporation to refrain from soliciting color comic supplement business from one another's customers and to maintain and stabilize the price of color comic supplement printing in the United States.

3. Greater Buffalo and NEA have not violated section 1 of the Sherman Act as charged in the complaint.

4. Greater Buffalo and NEA have not engaged in any competition or conspiracy with King or each other or any other person or corporation to monopolize trade and commerce in the color comic supplement industry.

5. Greater Buffalo and NEA have not violated section 2 of the Sherman Act as charged in the complaint.

6. The acquisition by Greater Buffalo of International has not resulted and will not in the future result in a substantial lessening of competition or tendency to create a monopoly with respect to the color comic supplement industry, and such acquisition by Greater Buffalo did not constitute a violation of section 7 of the Clayton Act.

7. NEA has not sold comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors.

8. NEA has not violated section 3 of the Clayton Act as charged in the complaint.

9. The defendants, Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enterprise Association, Inc. are entitled to a judgment dismissing the complaint.

Enter judgment accordingly.

/s/ John O. Henderson,
JOHN O. HENDERSON,
United States District Judge.

MAY 26, 1970.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
(Civil Action File No. 9004)

UNITED STATES OF AMERICA

v.

GREATER BUFFALO PRESS, INC., ET AL.

JUDGMENT

This action came on for trial before the Court, Honorable John O. Henderson, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint be dismissed as to defendants Greater Buffalo Press, Inc., International Color Printing Corporation, Southwest Color Printing Corporation, Dixie Color Printing Corporation and Newspaper Enterprise Association, Inc.

Dated at Buffalo, New York, this 26th day of May, 1970.

ROLAND E. LOGEL,
Clerk of Court.

APPENDIX C

[Filed: July 24, 1970]

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK

(Civil Action No. 9004)

UNITED STATES OF AMERICA, PLAINTIFF

v.

GREATER BUFFALO PRESS, INCORPORATED; THE HEARST
CORPORATION; NEWSPAPER ENTERPRISE ASSOCIATION,
INC.; THE INTERNATIONAL COLOR PRINTING COM-
PANY; SOUTHWEST COLOR PRINTING CORPORATION;
AND DIXIE COLOR PRINTING CORPORATION,
DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES BY THE UNITED STATES OF AMERICA

Notice is hereby given that the United States of
America, plaintiff herein, appeals to the Supreme
Court of the United States from the judgment en-
tered May 26, 1970, dismissing the complaint in this
action.

LEWIS BERNSTEIN,
Attorney,
Department of Justice.

(45)

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IN THE

Supreme Court of the United States

October Term, 1970

No. 821

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

VS

GREATER BUFFALO PRESS, INC., *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

MOTION TO AFFIRM

The appellees move pursuant to Rule 16 of this Court to affirm the judgment sought to be reviewed on this appeal on the ground that it is manifest that the questions on which the decision of this cause depend are so unsubstantial as not to need further argument.

The trial court announced no new proposition of law. It merely applied oft stated principles to the facts as found. The trial court's decision is limited to these facts and is not one of general application and cannot foreseeably affect other cases.

Statement of Case

The complaint in this case was filed in January, 1961 and charged The Hearst Corporation with violating Section 3 of the Clayton Act and conspiring to violate Sections 1 and 2 of the Sherman Act; Newspaper Enterprise Association, Inc. with violating Section 3 of the Clayton Act and conspiring to violate Sections 1 and 2 of the Sherman Act; and Greater Buffalo Press, Inc. with violating Section 2 of the Sherman Act, Section 7 of the Clayton Act, and conspiring to violate Sections 1 and 2 of the Sherman Act.

All that remains of these charges is an appeal by the government from the dismissal of the Section 7 violation alleged against Greater Buffalo Press.

On May 26, 1970 after a protracted trial a final judgment was entered in the District Court for the Western District of New York dismissing the complaint against Greater Buffalo Press and its subsidiaries and dismissing the complaint against Newspaper Enterprise Association, Inc. The Court decided that the acquisition by Greater Buffalo Press of the stock of International Color Print Corporation in 1955 did not violate Section 7 of the Clayton Act (15 U. S. C. § 18). The Court also dismissed charges of conspiracy under Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2) and charges that Newspaper Enterprise Association, Inc. violated Section 3 of the Clayton Act (15 U. S. C. § 14). Much earlier in the litigation, on August 31, 1965, a consent decree was entered with respect to the Hearst Corporation and its subsidiary King Features Syndicate.

The government now seeks to appeal from only that portion of the judgment which dismissed charges against Greater Buffalo Press, Inc. alleging a violation of Section 7 of the Clayton Act. The charges originally brought

against the defendant Hearst Corporation and its subsidiary King have been dropped by entry of the consent decree and the government is not appealing the dismissal of the other charges against either Greater Buffalo Press or Newspaper Enterprise Association because of what the government calls "changed circumstances" (Jurisdictional Statement fn. 2, pp. 4-5).

Opinion Below

The opinion of the District Court is reported at CCH Trade Cases ¶ 73,195 (W. D. N. Y. 1970) and is set forth at pages 23-43 of the appellant's Jurisdictional Statement.

Summary of Argument

The decision of the District Court dismissing the complaint rests upon findings of fact which present no substantial question to this Court. A study of the opinion of the District Court reveals that no novel or new propositions of law are relied upon and no unique legal or legal-economic analysis is set forth. The District Court made proper determinations of fact supported by evidence which are not clearly erroneous. It correctly applied the relevant statutes and case law as announced by this Court in dismissing the complaint.

ARGUMENT

Contrary to the position of the Justice Department in cases such as this, the fact that the government has been unsuccessful in antitrust litigation does not, in itself, mean that the appeal presents substantial questions for review by this Court. The District Court found as a fact that the acquisition of International Color Print Corporation by Greater Buffalo Press "had no reasonable probability of

substantially lessening competition in the color comic supplement industry" (District Court Opinion, p. 37¹).

This finding is amply supported by the evidence. The decision of the District Court evidences a complete awareness of the unique features of the industry. Any meaningful discussion of the substantiality of the questions attempted to be presented to this Court must necessarily proceed from the particular and peculiar facts which make up the color comic supplement printing business as an acquisition should "be functionally viewed in the context of its particular industry". *Brown Shoe Co. v. United States*, 370 U. S. 294 at 322 (1962).

Greater Buffalo Press is one of several firms that print color comic supplements for newspapers. Many other firms do such printing for newspapers. Many newspapers print their own. Every newspaper has the ability to print its own comic supplements, but many have found that it is more economical to obtain the supplements from independent sources (Opinion, pp. 26, 27; Jurisdictional Statement, p. 5). There is in the business a state of flux in that many newspapers that never printed their own comic supplements are now doing so, and many others that used to print their own now obtain them from comic printers.

Since the material contained in the comic strips is copyrighted, the newspapers must be licensed to publish each specific comic appearing in its supplement. The licensing of such comics is done through syndicates such as King Features Syndicate, a subsidiary of the Hearst Corporation, and Newspaper Enterprise Association, Inc. These syndicates also sell the printing of the supplements. The

¹ Citations to the opinion of the District Court refer to pages of appellant's Jurisdictional Statement.

syndicates not only control who shall publish comics on a broad, regionally exclusive basis² but also control other licenses such as nationally syndicated writers and columnists whose appeal to the reading public is extensive. The loss of either desirable comic strips or of popular national columnists can seriously affect the circulation of a newspaper.

Any newspaper seeking to furnish its readers with a color comic supplement may do so in either of two ways. It can negotiate with these syndicates for the license to publish the individual comics it desires and then either print the color comic supplement itself or contract with one of many color printers to print the supplement. Alternatively, it can contract with these syndicates for both the license and the furnishing of the printed color supplement product.

One need not be familiar with the newspaper business to understand the difficulty smaller newspapers would have in resisting attempts by the syndicates to also obtain the printing. Dealing with the syndicate exclusively for both the licensing and furnishing of the finished comic supplement can benefit the newspaper in obtaining or holding the exclusive license to both the comic features and the columnists who have great appeal with its readers. Collateral to this method of furnishing a color comic supplement is the ability of the syndicates such as King and Newspaper Enterprise Association to offer smaller newspapers a "ready-print" supplement section which is a prepared supplement section containing the same comic features with only a masthead change substituting the name of each newspaper using the ready-print section (Opinion, p. 29).

² The legality of this practice was not an issue in this case, but is now the subject of a number of pending cases. See footnote 3, p. 5 of Jurisdictional Statement.

This eliminates set-up charges which might be prohibitive for a small newspaper either printing its own or contracting with a printer.

The fees charged for the licensing of features by the syndicate are not established by published price lists, but are negotiated between the newspaper and the syndicate (Opinion, p. 27; Jurisdictional Statement, p. 5). Greater Buffalo Press has no control over the licensing of features. It owns no feature rights of its own, and has never engaged in the licensing aspect of the business (Opinion, p. 29; Jurisdictional Statement, p. 6). Its business consists exclusively of printing color comic supplements for those who have obtained the licensing rights elsewhere. International, on the other hand, has never printed color comic supplements for newspapers. Its business was solely that of a captive contract printer engaged in printing the comics for the King Features Syndicate, subsidiary of the Hearst Corporation, which is engaged in the sale of features to newspapers (Opinion, p. 36).

International never employed a sales force of its own and its sole source of business was King Features Syndicate (Jurisdictional Statement, p. 7). International's contract with King was cancellable on six months' notice (Jurisdictional Statement, p. 7). Hearst, King's parent, has always had and continues to have the capability of printing the comic supplements for both King's customers and Hearst's own papers (Opinion, p. 37). Some of Hearst's subsidiary newspapers print their own color supplements (Jurisdictional Statement, p. 8). But, as the government's Jurisdictional Statement notes, both King Features Syndicate and Hearst have a "policy" of not getting into the business of printing color comic supplements for others (Jurisdictional Statement, p. 8).

A. The effect of the acquisition was to benefit competition in the sale of color comic supplement printing.

Greater Buffalo Press, a family-owned business guided by the genius of its founder, Walter Koessler, was and is the most efficient printer of color comic supplements. Unaided by the benefits of public financing and due in large part to his mechanical talent, he was able to develop a system of pre-registry in the color printing field which enabled Greater Buffalo Press to produce a higher quality product at a lower price (Opinion, p. 28; Jurisdictional Statement, p. 6).

Because the acquisition took place fifteen years ago, the District Court was able to examine not what "might be the effect", or what "probably will be" the effect but rather what *was* the effect of the acquisition. It found that the competition had not lessened but had increased (Opinion, p. 38). The reason it had increased is because Greater Buffalo Press was able to help International install its advanced process of pre-registry by use of its "improved methods and engineering skills" (Opinion, p. 38). This enabled International to immediately increase its product from 16,000 per press hour to 20,200 per press hour of its admittedly "better quality product" (Jurisdictional Statement, p. 5). The result of this was to enable the syndicates to offer large newspapers, as well as smaller newspapers purchasing "ready-prints" a better quality product at a cost less than they would be able to obtain the product elsewhere or produce it themselves.³ The syndicates

³ As an illustration of the "changed circumstances" and to show that competition continued in the industry we note that approximately thirty newspapers printing their own color comic supplements in 1955, elected thereafter to obtain printing from syndicates or printers; i.e. Beaumont, Texas Enterprise; Bridgeport, Connecticut Herald; Charlotte, North Carolina; Daytona Beach News; Denver Post; Denver Rocky Mountain News; Elmira, New York Star Gazette & Telegram; Ft. Smith Times Record; Galveston, Texas Tribune; Jacksonville

(Footnote continued on following page)

were assured of a permanent source of high quality printing. Competition in the sale of the printing flourished as a result. The syndicates became more competitive. The product they could furnish to their customers via "ready-print" was stabilized and improved.

A hallmark of restrictive competition is rising prices in favor of the remaining competitors. Yet Greater Buffalo Press has not raised its prices in fifteen years. The reason for constant prices during this period of rising cost is competition, both actual and potential. Should Greater Buffalo Press raise its prices to the point where others can profitably print color comic supplements, the newspapers and syndicates would enter the field and are able to do so without capital investment since the facilities including their own are at their disposal.⁴ The District Court recognized this:

"There is every reason to believe that if at any time the cost of purchasing such color comic supplements exceeds the cost to the newspapers of printing them, the newspapers will do the printing themselves" (Opinion, p. 27).

As a result of the acquisition, the syndicates have the best of both possible worlds. They remain possessed of

(Footnote continued from preceding page)

Times Union; Jefferson City, Missouri Post Tribune; Coshocton, Ohio Tribune; Laredo, Texas Times; Little Rock, Arkansas Democrat; Memphis Commercial Appeal; Missoula, Montana Sentinel; Muskogee, Oklahoma Times Democrat; New Orleans Times; Oakland Tribune; Owensboro, Kentucky Messenger; Pasadena Star; Philadelphia Bulletin; Philadelphia Inquirer; Pittsburgh Press; Portland Oregonian; San Francisco Chronicle; Springfield, Massachusetts Republican; St. Louis Post Dispatch; Tampa Tribune; Yakima, Washington Herald.

Of the comic printing business of these newspapers, eleven were obtained by Greater Buffalo Press, five by King Features Syndicate, four by Acme Printing, three by Newspaper Enterprise Association, three by Hearst, and one each by Eastern Color, Southern Color, World Color, and Bartlesville, Oklahoma Examiner-Enterprise.

⁴ See list of newspapers that now print their own comics that did not do so in 1955 set forth in footnote 5 *infra*.

their monopoly power with respect to licensing and have a supplier of quality color printing at a price economically advantageous to them. Their ability to compete with each other and to persuade newspapers to purchase their product rather than print it themselves is enhanced, for now they are able to supply a finished product of higher quality. Indeed, the syndicates are now better able to lure both the customers of other printers and those newspapers that formerly printed their own comics since now the finished product of the syndicates is equal in quality to that of Greater Buffalo Press. Elimination of the least efficient printer in no way violated the antitrust laws for the "protection of competition not competitors" is the purpose of Section 7. *Brown Shoe Co. v. United States*, 320 U. S. 294 at 324 (1962). Speaking before a meeting of the American Bar Association Section of Antitrust Law in 1967, Federal Trade Commissioner Philip Elman stated:

"But no merger has ever been held unlawful on the ground that by increasing the efficiency of the parties to the merger, it hurt their competitors. No case has been, or is likely to be, brought on such a theory. I have read about, but see no real evidence of, a conflict between the merger law and economic efficiency. *Where the only consequence of a merger is to achieve greater economies and increased efficiencies, who—I ask—will attack it as anti-competitive?*" (italics ours). 36 A. B. A. ANTITRUST L. J., *Merger Rules and Guidelines* 23 at 27 (1967).

The government is in error in attacking as anti-competitive the acquisition of International which admittedly achieved great economies and increased efficiency.

B. The acquisition of a non-competitor did not have the effect of substantially reducing competition.

International never competed with Greater Buffalo Press for newspaper printing. Its acquisition by Greater Buffalo Press could not in any way lessen competition between the two which never existed. The District Court defined the relevant product market and line of commerce to properly reflect the existing situation in the color printing business. By distinguishing between the printers that print for newspapers and those that print for syndicates the court took into account the power the syndicates possess over the licensing of copyrighted features. This is evident from the finding of the court:

"These are the lines of commerce—to treat them together as one line of commerce, *i.e.* the printing and sale of color comic supplements would be to ignore the tremendous leverage of the syndicates which control the copyrighted features. The testimony of Walter Koessler and other witnesses in this case has established firmly that the syndicates, and in particular King, have a unique position by virtue of the legal monopoly which they have over the copyrighted features. The court is of the opinion that the peculiar characteristics and business uses of copyrighted features justify considering printing for syndicates as a separate product market" (Opinion pp. 30-31).

This was an eminently sensible distinction to make. Otherwise, the product market would have included King as a competitor in the printing business and King does no printing at all. The combination of printing and selling of supplements urged by the government as an appropriate line of commerce would have resulted in an over-broad and artificial analysis which would not have reflected the situation in the industry. It would have included as printers those who are *not* and treated as sellers those who do *not*.

And one of the reasons why the printers cannot be classed together is because the syndicates do not separate the prices charged for printing from those charged for licensing. Proper market definition separates sellers from printers and syndicate printers from printers for newspapers. Thus, while it may be true that Greater Buffalo competes with King for sales, it does *not* compete with International for sales or with King for printing. And because International's sole customer, King, controls the features, Greater Buffalo cannot compete with International for printing because Greater Buffalo's prices do not include the licensing right.

The artificiality of the product markets urged by the government and the tortuous reasoning engaged in by the government is amply reflected by the repeated references to "International-King" (Jurisdictional Statement, pp. 16, 17). Such references ignore the separate corporate entities of these concerns and erroneously convey the impression that Greater Buffalo Press obtained part of King by an acquisition. This is simply not true nor is there any support in the record for such a supposition. Moreover, the fact persists that Greater Buffalo Press did not obtain a contractual right to print for King by acquiring International. King could have gone to other printers or used the facilities of Hearst to do the printing itself. While Greater Buffalo Press may have had "high hopes" (Jurisdictional Statement pp. 17, 18, fn. 10) for obtaining the printing contracts because of its improved methods and pre-registry system, the appellees are unable to locate any reported case for the proposition that "high hopes" constitute a *per se* violation of Section 7. Indeed, it did obtain such contracts but only because it was and "is the most successful and efficient comic supplement printer, largely

because of the technical and innovative skills of its president, Koessler" (Jurisdictional Statement, p. 6). Whatever the salutary purposes of the Clayton Act, inefficiency should not be fostered and efficiency penalized by enforcement of its provisions.

C. The District Court properly rejected the "numbers game" test relied on by the appellant below and now advanced as presenting a substantial question.

The appellant, relying on previous discredited statistics, blandly asserts that Greater Buffalo Press "obtained approximately three-quarters of the industry's printing capacity" (Jurisdictional Statement, p. 14). This erroneous assertion, based on fragmentary figures which do not include the color prints of newspapers which do their own printing, and premised on the broad and artificial product market urged below, do not merit consideration. The District Court impliedly rejected the "numbers game" test. *United States v. Phillipsburg National Bank*, 399 U. S. 350 at 376 (1970). This was clearly demonstrated by the District Court's question to counsel for the government on final argument:

"The Court: What are you urging me to do, find like a formula that 30% equals violation?"

(Transcript, December 17, 1969, p. 5, line 18.)

The rejection of the government's analysis is amply supported by previous decisions of this Court and by the evidence in this case casting serious doubts on both the applicability and relevancy of the cited statistics with regard to this particular industry.

The District Court correctly declined to follow this computer-like "*res ipsa loquitor* approach to anti trust

cases" *F.T.C. v. Procter & Gamble Co.*, 386 U.S. 568 at 581 (1967).

D. The divestiture by Greater Buffalo Press of International at this time would be inequitable and would only serve to benefit Hearst and King Features who were originally alleged to be the principal wrongdoers.

This litigation was initiated as the result of a complaint concerning tie-in practices of King Features, *i.e.* the tying of licenses for features with contracts for the printing thereof. This action was halted against Hearst and King Features by entry of an innocuous consent decree on August 31, 1965. This decree, characterized as a "somewhat unusual conditional decree" in the government's Jurisdictional Statement in a footnote at p. 15, was said to have been agreed upon by the government to protect King's ability "to complete effectively". Thus, King, the alleged predator, became the party for whom the government sought protection. The trial court's comment on this phase of the litigation appears in the Jurisdictional Statement at p. 24. King has become the ward of the government since it is King who is allowed to continue negotiating license fees and printing costs in package form (the original basis for the commencement of the action). King's alleged violation seems to have become unimportant and the government's only concern seems to be that King be furnished with an independent supplier of printing.

This is a most unusual case in that every customer of Greater Buffalo Press and every customer of International has at all times had and continues to have easy access to the market with the continued ability to print its own comic features. Why, in the circumstances, the Justice Department should continue to concern itself with this case in

the face of findings of fact adverse to its contention, we do not know. We believe that the observation of Mr. Justice Harlan in *U. S. v. Phillipsburg National Bank*, 399 U.S. 350 at 374 (1970) is applicable to the case at bar.

"With tigers still at large in our competitive jungle, why should the Department be taking aim at such small game?"

The government's citations to bank merger cases have no application to the case at bar but even in the bank cases it has been stated that:

"New entry can, of course, quickly alleviate 'undue' concentration. And the possibility of entry can act as a substantial check on the market power of existing competitors." *U. S. v. Phillipsburg National Bank*, 399 U. S. 350 at 377 (1970).

The ability to open a bank cannot be seriously compared to the ability of a going newspaper to print comic supplements for itself and others. Indeed, the "changed circumstances" (Jurisdictional Statement, pp. 4, 5, fn. 2) which persuaded the government to abandon its conspiracy charges against all of the defendants indicate that the competitive situation since 1955 remains healthy due to the entry of 13 newspapers⁵ into the color printing field.

⁵ Meridian, Mississippi Star; Augusta, Georgia Chronicle; Savannah, Georgia News; Miami, Florida Herald; St. Petersburg, Florida Times; Hackensack, New Jersey Record; Jackson, Mississippi Clarion Ledger; Bartlesville, Okla. Examiner; Chickasha, Okla. Express; Okmulgee, Okla. Times; Tacoma, Washington News-Tribune; Worcester, Mass. Telegram; Hays, Kansas News; Fairfield, Calif. Republic; Sacramento, Calif. Union. The supplement volume of these papers ranges from over 1,500,000 to approximately 16,500 four-pages sections per week which demonstrates that size is no obstacle to entry.

CONCLUSION

The question presented is not substantial. The judgment should be affirmed.

Dated: November 5, 1970.

Respectfully submitted,

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Statutes:

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Sherman Act, 26 Stat. 203, as amended, 15 U.S.C. 4:	
Section 1	4
Section 2	4

Miscellaneous:

Bok, <i>Section 7 of the Clayton Act and the Merging of Law and Economics</i> , 74 Harv. L. Rev. 226 (1960)	31
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 821

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF NEW YORK**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (App. 1691-1706), comprising its findings of fact and conclusions of law, is not yet officially reported.

JURISDICTION

The final judgment of the district court (App. 1706) was entered on May 26, 1970. The notice of appeal (App. 1706) was filed on July 24, 1970. Probable jurisdiction was noted on January 11, 1971 (App. 1707). The jurisdiction of this Court is con-

ferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States v. Continental Can Co.*, 378 U.S. 441; *United States v. Pabst Brewing Co.*, 384 U.S. 546.

QUESTIONS PRESENTED

1. The ultimate question on the merits is whether the acquisition by the leading printer of color comic supplements of a comparably large printer of such supplements violated Section 7 of the Clayton Act. That question, in turn, involves the following subsidiary questions:

a. Whether the district court defined too narrowly the relevant product market by focusing exclusively upon the direct printing competition between the acquiring and acquired firms, and ignoring the substantial competition between the acquiring firm and the sole customer of the acquired firm.

b. Whether the district court erred in ruling that there was no reasonable probability of substantially lessening competition in the color comic supplement printing business because the acquired firm did not itself engage in selling when, at the time of the acquisition, its printing was sold on an exclusive contract basis by its sole customer in competition with the acquiring firm.

c. If the above questions are answered affirmatively, whether the defendant met its burden for establishing a "failing company" defense to the Section 7 charge, where the acquired firm, at the time of the acquisition, (a) had operated for thirty years under

an agreement with its sole customer, which it was in the process of renegotiating, (b) was pursuing expansion plans, (c) had consistently shown after-tax profits and paid large dividends and (d) had sought only one alternative purchaser.

2. If the challenged acquisition violated Section 7, whether divestiture of the acquired firm is appropriate and whether such divestiture should include a subsidiary of the acquiring firm, whose plant was planned by the acquired firm prior to the acquisition and developed with its substantial assistance thereafter.¹

STATUTE INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

¹ Although the "questions presented" in the jurisdictional statement did not specifically include questions 1b and 2 above, we reserved the right to argue those issues if probable jurisdiction were noted. Jurisdictional Statement, p. 22, n. 12.

STATEMENT

A. Introduction

In January 1961, the United States filed a civil antitrust suit charging that the acquisition in 1955 by Greater Buffalo Press, Inc. ("Greater Buffalo") of all the stock of International Color Printing Co. ("International") violated Section 7 of the Clayton Act (App. 4-14). The complaint also alleged that Greater Buffalo, The Hearst Corporation ("Hearst"), acting through its unincorporated division King Features Syndicate ("King"), Newspaper Enterprise Association, Inc. ("N.E.A.") and a co-conspirator had conspired to restrain the sale to newspapers of printing of color comic supplements, in violation of Section 1 of the Sherman Act; that they had conspired to monopolize the sale and printing of those supplements, and that Greater Buffalo had monopolized such printing, in violation of Section 2 of the Sherman Act;² and that Hearst and N.E.A. were each parties to tying arrangements involving the licensing of comic features and the sale of color comic supplements, which violated Section 3 of the Clayton Act.

In August 1965, before trial, a consent decree was entered against Hearst, enjoining King generally from entering into any agreement limiting competition in the printing of color comic supplements and from tying the licensing of its comic features with

² The government eliminated the monopolization charge against Greater Buffalo in its amended complaint filed in 1965 (App. 1597-1608).

the sale of printing of comic supplements (App. 520-524). Although the decree expressly permits King to quote a single price for the licensing of features and the sale of printing, it provides that if a Greater Buffalo plant is divested pursuant to a final judgment in this action, King would then be subject to certain requirements to ensure against tie-ins, including the requirement that it must quote separately its price for licensing and for printing (App. 522). The decree further provides for the court's continuing jurisdiction over King for the purpose of providing such other relief as might be necessary to dissipate the effects of any antitrust violations which might be found against Greater Buffalo (App. 523).

After a full trial on all the issues, the district court found against the government on all charges (App. 1691-1706), and entered judgment dismissing the complaint (App. 1706).³

B. The Industry and the Parties

The weekend editions of most newspapers contain the familiar color comic supplements, containing comics, advertising and other features. The rights to

³ No appeal was taken from the district court's dismissal of the complaint against N.E.A., or its dismissal of the conspiracy claims against Greater Buffalo. The facts relevant to these allegations will be discussed only insofar as they are necessary to an understanding of the circumstances surrounding the challenged acquisition. While we believe that the court below erred in these respects as well as in its disposition of the Section 7 claim, we concluded that, because of the essentially factual basis of the court's judgment on these other claims, they did not present substantial questions warranting further review.

the individual comic features are generally controlled by syndicates. The price for such rights is negotiated between the syndicates and the newspapers, and the rights are granted on a regionally exclusive basis (App. 1018-1020, 1366-1367, 1379).⁴ In putting together a supplement, the newspaper may obtain features from different syndicate sources (App. 1017-1018).

While obtaining feature rights for a supplement, the newspaper must simultaneously arrange for its printing. Comic supplement printing requires specially skilled personnel and specially adapted printing equipment. Although newspapers, at least the larger ones, are capable of printing their own supplements, most find that a better quality product can be obtained more economically from independent comic supplement printers (App. 863-864).

Newspapers which do not print their own supplements must arrange to have it done by a color comic supplement printer. Arrangements can be made either directly with the printer or with an intermediary, such as a syndicate or a sales agency, which sells the printing of others in conjunction with its feature-selling business. Prior to selling such printing, the intermediary must, of course, have a commitment from the color comic supplement printer in order to be able to assure the purchasing newspapers that ex-

⁴ In a group of cases filed while the instant case was under submission, *United States v. Chicago Tribune-New York News Syndicate*, *United States v. Field Enterprises, Inc.*, and *United States v. The Hearst Corporation*, Nos. 67 Civ. 4596-4598, S.D.N.Y., the government is challenging as unreasonable certain of these regional exclusivity provisions. The legality of such exclusivity was not involved in this case.

acting production deadlines—which are the essence of the newspaper business—will be met. Whether its services are sold directly or indirectly, the printer tailors the supplements to the needs of the newspapers and ships them directly to such newspapers (App. 1252, 1334-1338). In arranging for printing, the distance between the printer and the newspaper is a factor, since transportation costs are substantial (App. 865, 869-870).

At the time of its acquisition of International, Greater Buffalo was the most successful and efficient comic supplement printer, largely because of the technical and innovative skills of its president, Koessler. It owned no feature rights of its own, but did some printing for the feature syndicates, though most of its sales were direct to newspapers. In 1954, the last full year before the acquisition, Greater Buffalo had sales of about \$8.5 million (P-138, para. 15, App. 1867). Its plants were then located in Buffalo and Dunkirk, New York, but it was in the advanced stages of planning for a new plant in Lufkin, Texas, intended to facilitate and increase sales to southern newspapers by reducing transportation costs. The Lufkin plant was opened in 1958 (P-138, para. 20, App. 1868).

International was also a comic supplement printer, comparable in size to Greater Buffalo, but not as efficient (App. 1106; P-62, App. 1823). Its owners, the Govin family, had made no capital investment in the company after their initial loan to commence operations had been repaid (App. 1109-1110), and consistently withdrew a large portion of the profits as dividends. The dividends continued to the date of ac-

quisition as follows: \$44,700 in 1953, \$34,800 in 1954 and \$17,400 for the first six months of 1955 (P-141, App. 1873). Although claiming a working capital deficit at the end of 1954 of about \$100,000 (App. 1111), the company showed a net profit for that year of \$11,000 (down from more than \$70,000 in each of the four prior years)* and its net profit for the year in which it was acquired (during one-half of which the company was under the control of Greater Buffalo) increased to more than \$88,000 (P-141, App. 1873).^o

International, like Greater Buffalo, also had annual sales of about \$8.5 million at the time of the acquisition (P-138, para. 15, App. 1867), but employed no sales force of its own as its sole source of business was King (App. 1103-1104). Since 1926, shortly after it was founded, International operated under long-term contracts with King who in turn sold the printing to those newspapers purchasing comic featureurs from King (P-2-7, App. 1415-1423, 1708).

* The apparent reason for the marked decline in net income is a matter of accounting. Charged against the income of that year was a deferred fund for the 1955 vacation pay of International employees (P-54, App. 1481). At that time, International employed approximately 300 skilled workers (App. 169). In addition, costs of the proposed opening of the southern plant were to be charged against income (P-54, App. 1481). Due to these charges, International's president requested that these amounts be excluded for purposes of determining his salary, which was based upon net income before the deduction of interest on notes payable to the shareholders and depreciation (*id.* at 1480-1481).

^o At the time of the acquisition, International had practically no debt and its daily cash balance for the year of acquisition averaged approximately \$130,000. (P-1, App. 1412, see also P-134, App. 1587-1588.)

Thus, International's revenues were obtained not from newspapers for which it printed, but solely from King under the contracts. The contract in effect in 1955 was cancellable upon six-months notice and permitted King to place 25 percent of its supplement printing with other printers (primarily on the West Coast) (P-1, App. 1410).

International's plants were located in Wilkes-Barre, Pennsylvania, and Peoria, Illinois (P-138, par. 8, App. 1866), the latter plant having been closed since the acquisition. In mid-1954, International's board of directors, prodded by King's recognition of the competitive disadvantage it would suffer when Greater Buffalo opened its Texas plant, authorized its president, Gorman, to develop plans for its own southern facility to be financed either by a favorable renegotiation of the King contract or by a loan (P-54, App. 1477-1478). Although King and International experienced difficulties in negotiating a long-term contract (P-54, App. 1477-1480; App. 1117-1123) and loan negotiations were not extensively pursued (App. 1118-1119), plans for a southern plant, nevertheless, went forward. By January 1955, after extensive investigations, International had focused on Sylacauga, Alabama as a proposed site. Hearst, on behalf of King, entered into a ten-year contract to purchase newsprint from a newsprint company in that area, contingent upon construction by International of a plant there (P-56, App. 1483-1485). Plans were drawn for such a plant (P-122, App. 1571-1573), and by June 3, 1955, four weeks prior to the acquisition, Gorman told the Sylacauga Chamber of Commerce

that "I can confidentially state that we are going to locate in Sylacauga * * *" (P-114, App. 1562).

King, the strongest syndicate controlling feature rights, is also the largest nonprinter selling color comic supplement printing (P-1, App. 1410-1411). In 1955, its sales of printing amounted to almost \$10 million, most of which was done by International (Ex. 5G to affidavit of Elliott H. Feldman, proceedings on order to show cause, 3/20/61). Moreover, King does not sell printing merely as an adjunct to its features business; it has at all times sought to earn a satisfactory profit on its sales of printing as well as on its sales of feature rights (*ibid.*).

Although some of Hearst's subsidiary newspapers print their own color supplements, Hearst does not print for King (P-62, App. 1823). Hearst has consistently maintained, as a matter of policy, that it is not interested in getting into the printing end of the business (App. 1113). Although Greater Buffalo contended at trial that Hearst had substantial excess color supplement printing capacity (P-62, App. 1823), there was evidence that conversion of such facilities to make them significantly competitive with independent color printers in handling King's requirements was technically and economically unfeasible (P-103-106, App. 1523-1537).

In 1955, the year of the acquisition, a total of about \$28 million worth of color comic supplement printing was sold to newspapers by printers and syndicates. While the record does not contain a precise breakdown of printing sales, a good picture of the relative strength of printers is given by the following break-

down by volume of printing (P-62; P-138, para. 18, App. 1868):

Comic Printer	Printing Volume (On Terms of 4-Page Sections)
The International Color Printing Company, Wilkes-Barre, Pennsylvania	27,237,658
Greater Buffalo Press, Inc., Buffalo, New York	26,843,474
Acme Colorprint Company, San Bernardino, Calif- ornia	5,001,714
Eastern Color Printing Company, Waterbury, Connecticut	3,681,339
Southern Colorprint, Newport News, Virginia	477,714
World Color Press, Inc., St. Louis, Missouri	753,559
Buffalo Colorpress, Inc., Buffalo, New York	3,289,032
Fort Worth Star-Telegram, Fort Worth, Texas	1,599,556
Hearst Corporation	2,956,434

Thus Greater Buffalo and International (printing exclusively for King) together accounted for more than three-fourths of the printing done by comic supplement printers for sale to newspapers which did not do their own printing. Each did more than five times the volume of the next largest printer (Computed from P-61, App. 1709-1822, P-62, App. 1823, P-63, App. 1824-1829).*

* The figures included for Hearst and the Fort Worth Star-Telegram represent supplement printing done by them for other newspapers.

* Exhibit P-62 (App. 1823) was compiled by the government from figures derived from International's annual industry survey (P-61, App. 1709-1822, P-63, App. 1824-1829, P-138, par. 18, App. 1868). Greater Buffalo contended below that the relevant market should include printing done by newspapers for themselves (P-62, App. 1823). The government objected to such inclusion on the ground that, while such papers might be potential customers of the independent printers, they would not seek the printing business of other newspapers (Plaintiff's Post-Trial Brief, p. 17). Even accepting the broadest market proposed by Greater Buffalo, its

C. The Acquisition

Dissatisfied with profit levels and unwilling to make needed investments for modernization and expansion, International's owners had desired to sell the company for several years prior to 1955 (App. 1111-1112). King was offered an opportunity to buy in 1952; although Frank Nicht, King's chief executive officer, favored the idea, Hearst declined to negotiate "at any price" (App. 1112-1113). Late in 1954, Gorman, International's president, through Nicht, obtained an introduction to Koessler of Greater Buffalo (App. 1113-1114). Koessler expressed an interest in acquiring International, and discussions quickly proceeded to negotiations over the fair market value of the company's stock (App. 1114-1115).

Nicht kept himself well informed on these negotiations (P-15, App. 1432-1433, P-16, App. 1434-1437, P-19, App. 1440, P-21, App. 1441-1443, P-23, App. 1447-1458; App. 932-943). On March 25, 1955, in a memorandum to his superior, he presented the sale of International to Greater Buffalo as one of three possibilities for solving International's problems; the others were renegotiation of the King-International contract at rates sufficient to finance International's southern plant, or acquisition of International by King (P-21, App. 1441-1443). Nicht advised:

The owners of International Color Printing Company are now quite definitely anxious to sell. *They can hardly sell without our consent and cooperation.* We have had many meetings

share combined with International's is nearly 42 percent (P-62, column 5, App. 1823).

among ourselves and with the representatives of ICP and Greater Buffalo Press. These meetings have up to this time involved the overall principles and not the many details.

The time has now come for us to decide what we want to do. If management prefers a carrying out of plan No. 3, [sale to Greater Buffalo] I am prepared to proceed if given a green light. Even in this event, *there is a possibility of encountering opposition in the effort to protect the interests of KFS on every conceivable point under a long-term selling contract with the prospective owners.*

Greater Buffalo Press realizes they can hardly continue purchase plans without the approval of KFS and Greater Buffalo Press has indicated they would like to talk further with me about this quite conclusively next week. [Id. at 1443; emphasis supplied.]

On June 13, 1955, Koessler wrote Nicht a detailed, formal letter setting forth "the provisions on which we are in agreement" (P-16, App. 1434-1437).^{*} These included, *inter alia*:

- 1) Greater Buffalo would purchase International and assume the long term printing agreement then being negotiated by International with King;
- 2) Greater Buffalo and King would each continue to hold their existing accounts;
- 3) With specified exceptions, Greater Buffalo would grant King exclusive sales rights on all new business; and

^{*} Koessler had sent Nicht a similar, less complete letter on June 2, setting forth "the points we discussed in New York, on which we agreed could go into a contract" (P-15, *at* p. 1432-1433).

4) With one exception, King would give all its printing business to Greater Buffalo and International.

The letter concluded: "This contract is to be for a period of ten years" (*ibid.*).

On June 25, 1955, Greater Buffalo purchased International's stock for \$575,000 (P-138, para. 16, App. 1867). Later that summer, International and King signed a ten-year printing contract, effective July 30, at substantially the same rates provided for in their previous contract. These rates had been agreed upon prior to the sale. (P-23, App. 1451; App. 1138-1139.) Eventually, in 1958, a contract designating King as Greater Buffalo's sales agent was executed by Koessler and Nicht (P-72, App. 1834-1843), but was not approved by the board of directors of either company, and never became formally effective. Notwithstanding Koessler's "understanding" with Nicht, Greater Buffalo, since the acquisition, while continuing to do most of King's printing, has taken substantial sales accounts from King (P-70).

After the acquisition, International, with financial support from Greater Buffalo, concluded arrangements for construction of a new plant in Sylacauga. The plant was opened in 1963 and is operated by Dixie Color Printing, a wholly-owned subsidiary of Greater Buffalo (P-138, para. 21, App. 1868).

D. The District Court's Decision

The district court rejected the government's contention that the acquisition violated Section 7 of the Clayton Act on two principal grounds. First, it found

that the printing of color comic supplements directly for newspapers was a different market than the printing of such supplements for syndicates engaged in the sale of both features and comic supplement printing to newspapers. It reasoned that to treat them as a single market would be to ignore "the tremendous leverage" which control of features affords the syndicates in selling such printing to newspapers (App. 1696-1697). Having so defined the markets, the court found that Greater Buffalo and International had not been in competition before the acquisition, since International printed solely for a syndicate, King (App. 1700).

Although the court expressly found that "Greater Buffalo and King engaged in active competition for the business of printing color comic supplements" (App. 1697), it made no attempt to assess the impact of the acquisition on that competition. It found that at the time of the acquisition, there was no agreement, either between King and Greater Buffalo or King and International, for a new long-term printing contract for King's business (App. 1702). It viewed King as not dependent upon International for its printing, believing that King had access to either the capacity of Hearst or other independent printers (App. 1701-1702). The court concluded, therefore, that in acquiring International, Greater Buffalo simply took a calculated risk that it could obtain King's printing, and did not obtain by the acquisition a further share of the printing market (App. 1702).

Second, the court found that, at the time of the acquisition, International was a failing company

(App. 1701). Its basis for this conclusion was that King, International's sole source of business, had been placing some business elsewhere and was threatening to increase this practice (which it could do under the six-month cancellation clause in the contract) unless International built a southern plant. The court found that International lacked financing for necessary expansion and modernization since it had a working capital deficit, its owners were unwilling to invest capital, and King was unwilling to enter into a new long-term contract at higher rates. Noting that King had refused to buy International, the court found that there was no other prospective buyer. The court also found that International became a healthy and profitable company after the acquisition because of technological improvements made possible by Greater Buffalo (App. 1702). It found further that competition from the remaining firms in the industry had increased during the fifteen years since the acquisition (*ibid.*).

Finally, the court suggested that even if there was a violation it was insufficient "to warrant a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct" (*ibid.*).¹⁰

¹⁰ In a concluding footnote, the court indicated its view that the real offender in the case was King. It observed that the evidence strongly suggested that King had utilized unlawful tie-in practices to restrict competition with Greater Buffalo in the sale of printing. The court pointed out, however, that it was without power to impose further relief against King, under the consent judgment entered against it, in the absence of a finding of violation of any antitrust law by Greater Buffalo (App. 1704, n. 4).

SUMMARY OF ARGUMENT

The effect of Greater Buffalo's acquisition of International was that the largest and most efficient integrated printer-seller of color comic supplements increased its share of the industry's printing capacity to approximately 75 percent, and also obtained the capacity and contract right to perform most of the printing for its leading sales competitor. As a result, the leading sales competitor was denied an independent source of printing. In holding that this acquisition did not violate Section 7 of the Clayton Act, the district court defined the relevant product market in a narrow and artificial manner, considering only sales competition between the acquiring and acquired firms, while ignoring the substantial competition for sales of color comic supplement printing to newspapers between the acquiring firm and the sole customer of the acquired firm. Moreover, its artificial market definition led it to ignore the direct printing competition that existed between the acquiring and acquired firms prior to the acquisition. The district court also stated that competition has flourished in the color comic supplement printing industry since the acquisition; such competition, however, is necessarily limited in scope and does not approach the fuller competition that would exist in the presence of another independent printer of comparable size to Greater Buffalo. Finally, the court upheld a failing company defense which did not satisfy the standards this Court has announced for that defense.

The district court's view that even a finding of violation would not justify divestiture requires this

Court to determine the appropriate relief to redress the impact of this anticompetitive acquisition. This Court should direct a divestiture that will not only restore actual competition in the color comic supplement printing business, but also the potential impact on such competition existing at the time of the acquisition resulting from the acquired firm's well-advanced plans for construction of a southern plant. Specifically, effective divestiture should include not only the acquired assets, but also the Sylacauga, Alabama plant operated by a Greater Buffalo subsidiary, as the culmination of International's pre-acquisition planning.

ARGUMENT

I

The Color Comic Supplement Printing Business Constitutes a Single Line of Commerce Under Section 7 of the Clayton Act.

Both Greater Buffalo and International print color comic supplements for newspapers that do not print their own. Greater Buffalo sells its printing. International does no selling itself. All of its selling is done by King, and King rather than the newspapers has the direct buyer-seller relationship with International. The actual product produced by Greater Buffalo and International, of course, is the same. There is no difference in either the printing process or the finished product dependent upon whether the color comic supplement is sold to its ultimate user (the newspaper) by the printer itself or by a syndicate that has a contract with the printer.

The printing of color comic supplements and the selling of such printing are integral, essential and inextricably intertwined component parts of the color comic supplement printing business. The same firm may do both, as Greater Buffalo does; or the component elements may be separated, as in the case of International and King. But however a particular printing business is organized, its basic character is the same: it is engaged in producing and distributing color comic supplements for newspapers. That is the market in which both Greater Buffalo and International—the latter in conjunction with King—operate; and it is the “area of effective competition” (*Standard Oil Co. v. United States*, 337 U.S. 293, 299-300, n.5) in which the legality of the merger is to be determined. Cf. *United States v. Philadelphia National Bank*, 374 U.S. 321, 357.

In terms of traditional Section 7 product market analysis, there are three separate but interrelated markets present in this case. Since International does no selling but only printing, and since King does no printing but only selling, the printing of color comic supplements and the selling of such printing are separate markets. In our jurisdictional statement we stressed the impact of the merger upon competition in the selling market. In the trial court, we argued not only that printing and selling were separate markets but that together they constituted a third market (Plaintiff's Post-Trial Brief, pp. 3-14). On the facts of this case, these nice distinctions seem artificial and unimportant. In evaluating the effect of a merger upon competition, one must look to the eco-

conomic realities of the industry. The relevant product market in Section 7 cases is accordingly determined by the nature of the commercial entities involved and the competition they face. *United States v. Phillipsburg National Bank*, 399 U.S. 350, 360; *United States v. Continental Can*, 378 U.S. 441, 456-457.

The facts of this industry are that the merging companies are both engaged in the business of printing and distributing color comic supplements. As the district court expressly found, King and Greater Buffalo were active competitors in selling color comic supplements to newspapers (App. 1697; see p. 15, *supra*). As we later show (see *infra*, pp. 25-28), that competition was dependent upon and necessarily involved competition between International and Greater Buffalo at the production level. This single economic area—comprising the actual printing and the selling of such printing—constitutes the color comic supplement business, and is the segment of the market where the effect of the merger upon competition will be felt. It is therefore an appropriate line of commerce for Section 7 purposes.

The district court deemed dispositive, however, the fact that a syndicate's ownership of the right to sell the comic features gives it "tremendous leverage" in selling the printing of such features (App. 1696-1697). In its view, this leverage made printing for syndicates a separate market. But the fact that a syndicate may have a competitive advantage over an ordinary printer in selling printing does not make the printing the syndicate sells a different product; the printing is the same no matter for whom it is done or

through which channels it is distributed. The fact that King, in selling International's printing, may have had advantages that Greater Buffalo did not have in selling its own printing, is not inconsistent with the conclusion that Greater Buffalo, International and King were all engaged in the single line of commerce consisting of the printing and distribution of color comic supplements. It is hardly novel that certain competing firms in an industry have various advantages over others. Indeed, we know of no case in which the competitive advantages enjoyed by a particular seller have themselves been deemed to constitute a sufficient product distinction to justify treating that firm's business as a separate line of commerce.

In any event, even if the district court were correct in ruling that the printing of color comic supplements for syndicates is a separate product market, that would not preclude the existence of the broader product market upon which the government relies. Although "within this broad market, well-defined sub-markets may exist which, in themselves, constitute product markets for antitrust purposes" (*Brown Shoe Co. v. United States*, 370 U.S. 294, 325), "sub-markets are not a basis for the disregard of a broader line of commerce that has economic significance" (*United States v. Phillipsburg National Bank, supra*, 399 U.S. at 360).

II

The Effect of the Acquisition May Have Been Substantially to Lessen Competition in the Color Comic Supplement Printing Business.

A. The Acquisition Restrained Competition between Greater Buffalo and King and Eliminated Competition between Greater Buffalo and International.

The court's line-of-commerce error led it into the further error of analyzing the competitive effects of the acquisition solely in terms of competition between Greater Buffalo and International. It is well-settled that the competition which Section 7 seeks to preserve is not merely that between the acquiring and acquired firms. *Brown Shoe Co. v. United States*, 370 U.S. 294, 317; *United States v. DuPont & Co.*, 353 U.S. 586, 589-593. In this case the competition most substantially and dramatically lessened by the acquisition was between Greater Buffalo and King in the sale of comic supplement printing, which was a vital aspect of the printing business.¹¹ In acquiring International, Greater Buffalo not only increased its share of color comic supplement printing to approximately 75 percent (see p. 11, *supra*),

¹¹ Paragraph 27 of the amended complaint, charging a Section 7 violation, alleged that competition between Greater Buffalo and International was eliminated. Paragraph 30(d), however, which described the effects of all the violations charged, alleged more generally that "competition in the printing and sale of color comic supplements has been suppressed." The government's trial brief emphasized the "combined printing and selling of supplements" as an appropriate line of commerce, and the lessening of competition between Greater Buffalo and King (Plaintiff's Post-Trial Brief, pp. 6-14, 17).

but also gained the almost certain right to print for King, its principal selling competitor.¹²

As a result of the acquisition, King has become dependent upon Greater Buffalo for most of the printing which it sells in competition with Greater Buffalo, and price competition between the two necessarily has been restricted. King, seeking a profit from printing sales, obviously cannot quote a price below that which it pays Greater Buffalo for printing; Greater Buffalo, in seeking to take accounts from King, has no incentive to bid below the price King pays it for the work. It is no answer that Greater Buffalo has taken accounts from King since the acquisition; existing competition between them, effectively restricted to sales at a price higher than Greater Buffalo charges King for printing, is not the fuller competition that could exist if King had an independent printing source.¹³ Cf. *United States v. Container Corp.*, 393 U.S. 333, 337. It can hardly be supposed that either would often be inclined to compete so vigorously with the other as to jeopardize a mutually valuable customer-supplier relationship.

¹² The court found that Greater Buffalo, in acquiring International, did not acquire an additional share of the market because it had no assurance that King would continue to do business with International (App. 1701-1702). While Greater Buffalo may not have had a legally enforceable right to King's business following the acquisition, it certainly—in view of Koessler's letter to Nicht memorializing an agreement that Greater Buffalo would assume the new contract then under negotiation between International and King (P-16, App. 1434-1437)—had high and justifiable hopes of obtaining that business.

¹³ See, e.g., App. 1234-1236; P-135, App. 1589.

But Greater Buffalo does retain the option to disregard this relationship, when it feels it desirable to do so, by using its dominant position in printing to cut sharply into King's share of the market for sales."

¹⁴ Nicht, frustrated in his post-acquisition efforts to finalize an agreement with Koessler to protect King from competition from Greater Buffalo, came to recognize clearly King's disadvantage by reason of its having become dependent on Greater Buffalo for printing. He wrote his superior in June 1957:

I am not the least bit sanguine about the kind of a deal that can eventually be worked out with Mr. Koessler. There is every evidence that he wants to stall as long as possible. He is sitting pretty. I think we have been too conciliatory with Koessler and it may be that is likely to be the procedure because we can only lead from weakness. [P-102, App. 1521].

In the same letter he proposed that King acquire its own color supplement printing capacity:

Even if it cost money to do this and diminished profits, wouldn't that be better than the eventual loss of most, if not all, of our readyprint business?

* * * *

The Syndicate which for more than a quarter of a century has been number one in the readyprint field is now at best number two, and quite helpless. Newspaper history clearly emphasizes the difficulty, in fact hopelessness of regaining a lost position. There is plenty of current evidence to substantiate this.

If Koessler, because of what he has done the past few years, were to be attacked, in my opinion he would lose, but there is the danger, I suppose, of our becoming an accessory. Here is another reason why I think that if we were in the readyprint field with plants of our own it would restore a competitive aspect and certainly that wouldn't be discouraged in Washington [*id.* at 1521-1522].

In addition to the restriction of price competition, the acquisition also inevitably eliminated or weakened product quality and incidental service competition between Greater Buffalo and International. As long as King had an independent source of printing, there was constant pressure on each of those two companies to match or better the quality of the other's product and services. With the merger, however, the product and services being offered by Greater Buffalo and King originate from the same source; there is no reason now for the two printers to compete against each other in these important aspects of the business.

Analysis of the relationships among Greater Buffalo, King and International prior to the acquisition discloses the presence of certain important pressures on International which contributed to the existence of vigorous competition between Greater Buffalo and King and also between Greater Buffalo and International. These competitive pressures did not survive the merger. First, there was pressure on International flowing from its dependence upon King as its only customer. International's well-being turned upon the ability of King to underbid Greater Buffalo for sales of printing to newspapers, for only an increase in King's sales could lead to an increase in International's business. A second pressure on International stemmed from the fact that King was not inextricably tied to International for its printing. The contract between the two concerns allowed King to place up to 25 percent of its business with other printers (P-1, App. 1410) and was also cancellable on

six months' notice. Thus, in a very real sense, International was under a constant threat of losing printing business to Greater Buffalo.¹⁵

At the trial, Gorman of International conceded that his firm and Greater Buffalo competed on a production basis, and that he feared Greater Buffalo would take business away, but he maintained that this competition did not extend to sales (3 App. 1138, 1141-1142, 1150-1151, 1237).¹⁶ But such distinction between production and sales functions is not tenable in an industry in which one dominant firm was an integrated printer-seller, and the only comparably large printer was integrated by exclusive contract with the leading sales firm. The competitive pressures on International were applied directly by King, which depended upon production efficiency by International to support it in its sales competition with Greater Buffalo. King's Nicht constantly pressured International to match Greater Buffalo's production flexibility (App. 1105-1108) and did, at one point, threaten to take its printing elsewhere unless International constructed a Southern plant to meet the competition of Greater

¹⁵ Nor was the competitive squeeze all in one direction. Although its overall efficiency did not match Greater Buffalo's, International possessed considerable expertise of its own and actually enjoyed an advantage in some areas (App. 1106, 1181, 1214-1215; P-120, App. 1568-1570. See also P-110, App. 1544), including the printing of small runs (App. 1265).

¹⁶ Gorman twice made clandestine visits to Greater Buffalo plants, attempting to acquire insight into Greater Buffalo's know-how (App. 1106-1108, 1136-1138). In negotiations with International's labor union, he continually referred to Greater Buffalo as his greatest competitor (App. 272-276).

Buffalo's proposed expansion in the Southwest (App. 1108-1109, 1141-1142; P-12, App. 1425-1427, P-53, 1474-1477, P-54, App. 1477). On numerous other occasions Nicht induced International to cut its prices to meet competition (App. 1105), and, not long before the acquisition, King transferred three substantial runs from International to Greater Buffalo because of price and threatened to transfer more (App. 933-934, 985-986, 987, 1020-1023, 1032-1035, 1043-1044; P-13, App. 1427-1428).

With the acquisition of Greater Buffalo by International, the healthy competitive pressures on International described above have been either eliminated or sharply reduced. Because Greater Buffalo now controls approximately 75 percent of independent color comic supplement printing, King has no viable alternate source of supply.¹⁷ This absence of alternatives, as we have noted, severely limits the scope of competition which can exist between Greater Buffalo and King for sales of color comic supplement printing to newspapers. Newspapers who buy such printing lost some of the ability to play off those two firms against each other that they had when King had its printing done by International, which was a direct competitor of Greater Buffalo.

The effect of the acquisition has been to combine in a single firm approximately 75 percent of all color comic supplement printing. The merging firms, Greater Buffalo and International, were competitors

¹⁷ The post-acquisition contract between King and International, unlike its predecessors, was not terminable on six months' notice (App. 1225-1226).

of each other in any realistic sense of the term. The share of the market that Greater Buffalo obtained far exceeds the market shares this Court has deemed sufficient to establish a violation of Section 7 in its previous merger cases. *Philadelphia Bank* (30 percent); *Nashville Bank* (38.4 percent); *United States v. Phillipsburg National Bank*, 399 U.S. 350 (24 percent). Indeed, Greater Buffalo's share of the color comic supplement printing business that resulted from this acquisition approaches the 87 percent of the market that was held sufficient to establish monopoly power in *United States v. Grinnell Corporation*, 384 U.S. 563. Moreover, even in the broader printing market for which Greater Buffalo argued below, the combined Greater Buffalo-International market share would be 42 percent (P-62; see p .11, n. 8, *supra*)—a figure higher than the percentages involved in all previous Section 7 cases. In terms of market shares alone, the effect of this acquisition may have been substantially to lessen competition.

B. The Anticompetitive Effects of the Acquisition Have Not Been Eliminated or Significantly Mitigated by Subsequent Events.

As we have shown, the restriction of competition between Greater Buffalo and King and the elimination of competition between Greater Buffalo and International constitute anticompetitive effects that violate Section 7. The factors the district court relied on for its conclusion that the acquisition was not likely to—and, in fact, did not—have anticompetitive effects do not support that conclusion.

The district court stressed that the modern printing facilities of many newspapers enable them to print

the of their own color comic supplements should the cost of independent printing become excessive and that the excess printing capacity of the newspaper industry—part due to the recent demise of many newspapers—kept entry barriers in the color comic supplement printing industry low (App. 1693-1696). Presumably, these observations formed, at least in part, the basis for the court's ultimate conclusion that despite the acquisition, unfettered competition in the sale of color comic supplement printing prevails (App. 1702). On close analysis, however, neither of these factors—the readiness of newspapers to print their own supplements and absence of entry barriers—shows the existence of unfettered competition.

While many newspapers can do their own supplement printing, and this consideration may restrain Greater Buffalo from raising its prices to a point where many of its customers would find it economical to do so, Greater Buffalo, in the absence of other strong independent printers, faces no competition at prices below that point. The record shows that color comic supplement printing requires exacting mechanistic techniques performed by specially trained personnel and that independent printers specializing in supplement printing and handling a high volume of business can produce a high quality product more economically than most newspapers (App. 863-864; see also App. 919-920).¹⁸ Thus, the threat that newspaper

¹⁸ Two-thirds of all color comic supplement printing is done by independent printers (P-62, App. 1823).

customers will do their own printing—while admittedly a significant factor for Greater Buffalo to deal with—is not a substitute for the vigorous competition which would exist were there other independent printers also capable of achieving economies through specialization and bulk production.¹⁹

As far as the absence of barriers to entry on account of excess printing capacity is concerned, it may be that individual newspapers or those wishing to become independent printers would have no difficulty in finding printing capacity.²⁰ Even in this situation,

¹⁹ Greater Buffalo stresses the claim—made by Koessler in his testimony at trial (App. 1055)—that it has not raised its prices since the acquisition and that therefore it is clear competition has continued or increased in the industry. Motion to Affirm, p. 8. It is unclear, however, what the true significance of this claim is. On the one hand, Koessler claimed that Greater Buffalo absorbed an average 3 percent annual increase in labor costs while holding the price line (App. 1055, 1090-1091), but cost increases appear to have been passed on to its customers. Greater Buffalo's treasurer testified that the company's printing contracts are based on a formula whereby newspapers are charged separately for various cost components—*e.g.*, preparing plates, ink, etc. (App. 240-241, 253). Koessler conceded that the price of newsprint was passed on to its customers (App. 1091). Finally, Gorman testified that, since the acquisition, International has been able to charge King more under its contract because of its improved bargaining position (App. 1227-1228; see also P-133). The contract specifically provides for passing on increased newsprint and labor costs and leaves the rate for new business open to negotiation (P-23, App. 1450).

²⁰ Of course, it is by no means clear that much of the printing capacity made available through the demise of various newspapers could be economically adapted to fit the special

however, the possibility of potential competition is not an adequate substitute for actual, existing competition. See Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics*, 74 Harv. L. Rev. 226, 260-261 (1960). But in addition to obtaining printing capacity, new independent printers must match the efficiency and skill of the existing independent printers to compete effectively. The concentration of 75 percent of the independent color comic supplement printing business in one firm, which resulted from this acquisition, is likely to increase the difficulties new entrants would have in becoming significant competitors of Greater Buffalo.²¹ See Turner, *Conglomerate Mergers and Section 7 of the Clayton Act*, 78 Harv. L. Rev. 1313, 1356-1358 (1965); *Federal Trade Commission v. Proctor & Gamble Co.*, 386 U.S. 568, 578-580.

The district court also stressed the fact that, following the acquisition, Greater Buffalo had greatly improved the facilities of the International plant and that as a result International has been able to operate profitably (App. 1702). Greater Buffalo, in its Motion to Affirm, pp. 7-8, also cites the increased

requirements of color comic supplement printing. Cf. discussion at p. 10, *supra*; P-103-106, App. 1523-1537.

²¹ The district court pointed to the continued existence of the market's remaining independent printing firms as evidence of the absence of any anticompetitive effect flowing from the acquisition (App. 1702). But the market shares of these firms, small though they are, still apparently reflect local advantages conferred by the factor of transportation costs (see App. 917-919, 1214-1216). They are of little significance in the national color comic supplement printing market. See Bok, *op. cit. supra*, 74 Harv. L. Rev. at 274-278.

efficiency of International and claims that as a result competition has flourished as the syndicates now have access to a better product and can compete more effectively with Greater Buffalo. There are two answers. First, as we show in Part III, *infra*, pp. 33-35, it is by no means clear that International would have been allowed to stagnate had it not been acquired by Greater Buffalo. Whether or not International would have attained in the same period of time the increased efficiencies which followed the acquisition had its ownership remained independent from Greater Buffalo,²² it seems likely that the company would have thrived and continued to compete with Greater Buffalo. Second, although competition between King and Greater Buffalo may actually have increased at certain levels as a result of the improvement of International's facilities, it is still not, as we have noted, *supra*, pp. 23-24, the type of fuller competition that would exist if King had an independent source of printing.

²² This is not to argue that increased efficiencies flowing from an acquisition may not point towards legality where anticompetitive effects are marginal. Turner, *op. cit. supra*, 78 Harv. L. Rev. at 1331-1332. But here, direct competition has been eliminated at one level (production) and a floor placed on competition at another (sales). Both involved "horizontal" relationships to Greater Buffalo, in which category economic justification for restraints is inherently more difficult. *Id.* at 1320-1322. Where the choice is between efficiency and competition, Congress has chosen the latter. See *Brown Shoe Co. v. United States*, 370 U.S. 294, 344; *Federal Trade Commission v. Proctor & Gamble Co.*, 386 U.S. 568, 580.

III

Greater Buffalo Did Not Establish a Failing Company Defense.

An acquisition that would otherwise violate Section 7 may be permitted if the acquired firm is a "failing company," that is, if its resources were so depleted at the time of acquisition and its prospects for rehabilitation so remote that "it face[d] the grave probability of a business failure" (*International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291; *United States v. Diebold, Inc.*, 369 U.S. 654, 655) and if there was no other prospective purchaser for it (*Citizen Publishing Co. v. United States*, 394 U.S. 131, 138). The failing company defense in this case met neither requirement.

A. The district court concluded that International was failing at the time of its acquisition because it had a working capital deficit,²³ its owners wished to sell rather than make the capital investment necessary to permit modernization and expansion, financing of such expansion had not been obtained from other sources, and King, its sole customer, was threatening to place some of its business elsewhere (App. 1701). The court, however, overlooked the consistent profitability of the company (including a substantial increase in profits in the year of the sale),

²³ The appellees did not explain the basis on which International determined this deficit to be in excess of \$100,000 at the time of acquisition (App. 146, 1111; P-141, App. 1873). A virtually debt free firm with considerable assets (see App. 169) cannot be regarded as failing solely because its sole customer is dissatisfied with its performance (see n. 6, p. 8, *supra*, and accompanying text).

and its continued ability to pay substantial dividends to its owners (P-141, App. 1873). Notwithstanding some technological obsolescence, International was the largest volume printer of color supplements (P-62, App. 1823) and King had not invoked or threatened to invoke the six-month cancellation provision in its contract (App. 1225-1226). Moreover, expansion plans were being actively pursued even without assured financing (see p. 9, *supra*).

This is scarcely the picture of a business facing imminent collapse. There is little doubt that International's growth and development had stagnated by reason of the owners' insistence on high dividends to the exclusion of reinvestment of profits, and that the owners preferred a profitable sale to the commitment of capital for needed expansion and modernization (App. 1110-1112). But it is equally clear that this still-profitable concern was an important competitive force in color supplement printing, performing vital services for its sole customer, King. Compare *United States v. Third Nat'l Bank in Nashville*, 390 U.S. 171, 175-176, 183.

Indeed, International's failure was hardly possible so long as King remained dependent upon International for printing, and had the power to prevent it. For nearly 30 years, King had relied upon International to print substantially all the color supplements it sold. Nicht's contemporaneous memoranda make clear that King followed closely the Greater Buffalo-International negotiations; the acquisition was not consummated until Nicht had a written commitment from Koessler that International would continue to

print for King, and King's market position would be maintained (P-21, App. 1441-1443, P-23, App. 1447-1458, P-15, App. 1432-1433, P-16, App. 1434-1437).⁴⁴ Until such assurance was given, Nicht still considered either acquisition by King or renegotiation of the printing contract at rates adequate to finance International's southern expansion as viable alternatives (P-21, App. 1441-1443). King was in no position to permit any disposition of International which did not protect its long-term interests; in those circumstances it neither could nor would have permitted International to fail.

B. In any event, the failing company defense is inapplicable unless the acquiring company is "the only available purchaser." *Citizen Publishing Co. v. United States*, 394 U.S. 131, 138. King is the only prospective purchaser, other than Greater Buffalo, to which International was ever offered. But there are several smaller color comic supplement printers in the industry and acquisition by any one of them would have been substantially less anticompetitive (P-62, App. 1823). Nothing in the record indicates that these firms, or any others, were approached by International. Indeed, although the owners were apparently

⁴⁴ The district court did not view the Koessler letters as evidence of conspiracy between Greater Buffalo and King, apparently on the ground that Koessler was actually misleading Nicht as to his intentions to reach an agreement (App. 1698). But for present purposes that consideration is irrelevant, since King, relying on Koessler's promises, obviously believed that its interests were protected in the Greater Buffalo acquisition, and therefore was not required to undertake other steps to finance the expansion of International.

willing to sell as early as 1952 (App. 1112-1113), there is nothing to show that International's availability was even made known generally to the trade. In these circumstances, there was no basis for the district court's finding that "no other person or corporation was interested in acquiring International * * *" (App. 1701). The finding reflects an erroneous legal standard of what the defense requires (see *Nashville Bank, supra*)—a defense that has a "narrow scope" (*Citizens Publishing Co., supra*, at p. 139).

The burden of establishing the failing company defense "is on those who seek refuge under it." *Citizens Publishing Co., supra*, at 138-139. Greater Buffalo did not satisfy that burden.

IV

Divestiture of Both International and Dixie Color Is Necessary to Restore Effective Competition.

The Court has carefully considered the question of relief in antitrust cases because the public benefits of successful litigation may be entirely lost if the decree is inadequate. *United States v. Du Pont*, 366 U.S. 316, 322-324. Although normally the district court has the preliminary and primary responsibility to fashion a remedy, see *Du Pont, supra*, 366 U.S. at 323, the district court in this case has already indicated its view that, even if the acquisition violated Section 7, to order divestiture fifteen years later would be inappropriate (App. 1702).²³ Accordingly, if this Court

²³ Of course, the passage of time in itself is no barrier to divestiture of stock acquired in violation of Section 7 of the Clayton Act. See *United States v. Du Pont*, 353 U.S. 586.

agrees with the government that the acquisition was illegal, it should also hold that divestiture is necessary and should state the general contours that the divestiture order should have.

"Divestiture or dissolution has traditionally been the remedy for Sherman Act violations whose heart is intercorporate combination and control, and it is reasonable to think immediately of the same remedy when § 7 of the Clayton Act * * * is involved" (*Du Pont, supra*, 366 U.S. at 329-330). "[C]omplete divestiture is peculiarly appropriate in cases of stock acquisitions which violate § 7" (*id* at 328). See, also, *United States v. Crescent Amusement Co.*, 323 U.S. 173, 189; *Schine Chain Theatres v. United States*, 334 U.S. 110, 127-129; *United States v. Grinnell Corp.*, 384 U.S. 563, 578, 580. Divestiture is necessary here because it is the only remedy that will accomplish the three-fold objectives of the suit: (1) it terminates the violation, (2) it deprives the offender of the fruits of its offense, and (3) it breaks up the illegally acquired market power. *Schine Theatres, supra*.

Effective relief in this case—which should create a viable independent color comic supplement printer capable of providing King with an alternate source of printing from Greater Buffalo—requires divestiture²² of both the assets owned by International at

²² Divestiture in this case will also trigger the provisions of the Hearst consent decree (App. 522) empowering the court to require King to quote separately its prices for feature rights and printing, thus effectively preventing anti-competitive tying agreements.

the time of the acquisition and the Sylacauga, Alabama plant planned by International, but constructed and operated after the acquisition by Dixie Color Printing Corp., a Greater Buffalo subsidiary. International planned its Sylacauga facility under the insistent prodding of King, which well recognized the competitive threat to its southern business posed by Greater Buffalo's preparations for a plant in Lufkin, Texas (App. 1108, 1141-1142; P-12, App. 1425-1427, P-13, App. 1427-1430, P-22, App. 1443-1446, P-52, App. 1473-1474, P-53, App. 1474-1477). It is equally clear today that no prospective purchaser of International under a divestiture order could hope to be competitive in the South if Greater Buffalo were permitted to retain two plants in that area.

There is a precedent for divestiture of the Alabama plant in *United States v. Aluminum Co. of*

The government agreed to the somewhat unusual conditional decree against Hearst in recognition of existing competitive realities. So long as Greater Buffalo controls King's printing as a result of the International acquisition, a requirement that King quote a separate price for printing would substantially reduce any ability King now retains to compete effectively for color supplement printing sales.

Greater Buffalo has consistently suggested (Post trial brief, pp. 3-17; App. 1683-1690; Motion to Affirm, p. 13) that the government acted improperly in negotiating this decree inasmuch as this case is the result of complaints directed at King's illegal tie-in activities. But the government had no interest in forcing protracted litigation upon a defendant that was willing to ~~accept~~ accept to a judgment that preserved the court's ability to fully deal with industry-wide restraints at issue in a continuing trial. The government properly pursued additional violations uncovered while investigating the practices that first drew its attention to this industry.

America, 247 F. Supp. 308 (E.D. Mo.), affirmed, 382 U.S. 12. In that case, the district court ordered divestiture of a plant constructed after an acquisition in violation of Section 7, where the plant had previously been planned by the acquired firm. In this case, the Alabama plant was conceived of and constructed after the acquisition as a part of the International operation. International acquired, modified and its employees installed the equipment for the new plant (App. 156-160, 175-179, 180-182, 1197-1198, 1203, 1212, 1218-1219; P-119, App. 1567, P-128, App. 1578-1580, P-132, App. 1585-1586) and International's Gorman served as president of Dixie Color—the corporation created to operate the plant (P-126, App. 1574-1577)—for more than three years (P-127, App. 1859, see also P-115, App. 1563-1564) while International's supervisor became Dixie Color's general manager (App. 56-59, 1121-1212, 1219-1220). Gorman conceded at trial that for at least some period of time after the acquisition, it was contemplated that International would operate the new plant as part of the International operation (App. 1184, 1193, 1199). Finally, after the plant became operative, King transferred almost enough runs from International to Sylacauga to meet International's minimum estimates for a profitable operation (App. 244, 1213, 1217).

Although Koessler testified that Dixie Color was the fruition of Greater Buffalo's own plans for a plant in the Southeast, he conceded that his preference had been for the Chattanooga area and that through the persuasion of Gorman he reluctantly ac-

quiesced in the Sylacauga location (App. 874-876; see also App. 1120-1122). In any event, it is hardly probable that Greater Buffalo would have proceeded with any expansion plans in the area if International had been able to go forward with its plans and locate in the region first. Indeed, when Koessler first discussed with Gorman the availability of International for sale, he expressed interest in International's "southern section" (App. 1153-1154), strongly suggesting that a primary motive for the acquisition was elimination of International's planned expansion as a competitive threat.

Against this background, we submit that the Sylacauga plant was more the realization of International's plans than Greater Buffalo's, and must be viewed as a fruit of the unlawful acquisition. Moreover, its divestiture is essential to restore effective competition among color comic supplement printers.

CONCLUSION

The judgment of the district court should be reversed and the case remanded for the fashioning by the district court of appropriate relief as indicated in this brief.²⁷

Respectfully submitted.

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MARCH 1971.

²⁷ In addition to divestiture, it may be appropriate to include other provisions, such as one designed to prohibit after divestiture—at least for a period—Greater Buffalo from printing for King to assure that the purchaser of the divested assets will be in a position to obtain sufficient business to operate profitably (see App. 834-837). The selection and formulation of those provisions is for the district court to decide in the first instance.

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IN THE
Supreme Court of the United States

October Term, 1970

No. 821

UNITED STATES OF AMERICA,
v.
GREATER BUFFALO PRESS, INC., *et al.* *Appellant,*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES

Questions Presented

1. Did the acquisition of International by Greater Buffalo in June of 1955 under the circumstances of this case constitute a violation of Section 7 of the Clayton Act, especially in the light of the easy access to the relevant market on the part of newspapers and others?

(The subsidiary questions designated 1a and 1b at page 2 of the Government's brief are involved in, but, not vital to a determination of this question.)

2. If the challenged acquisition violated Section 7 of the Clayton Act, whether any divestiture, and particularly a divestiture of a new plant built five years *after* the acquisition by Greater Buffalo for its wholly-owned subsidiary Dixie Color, is appropriate or lawful?

Introduction

The case at bar although aimed principally against Hearst Corporation was commenced in January 1961 with a compendium of charges against the defendants Greater Buffalo Press, Incorporated (hereinafter sometimes referred to as "Greater Buffalo"), the Hearst Corporation (hereinafter alternately referred to as "Hearst" or "King" because it was through its unincorporated division King Features Syndicate that Hearst functioned in the matters and things involved in this litigation), Newspaper Enterprise Association, Inc. (hereinafter sometimes referred to as "NEA"), International Color Printing Company (hereinafter sometimes referred to as "International"), Southwest Color Printing Corporation (hereinafter, to the extent mentioned, referred to as "Southwest"*) and Dixie Color Printing Corporation (hereinafter sometimes referred to as "Dixie Color") (App. 4-6**).

The complaint charged that the defendants Greater Buffalo, Hearst and NEA, together with an alleged co-conspirator, Eastern Color Printing Company mentioned only in passing at the trial, had unlawfully conspired to restrain trade and commerce in violation of Section 1 of the Sherman Act; that these same defendants had conspired to monopolize the sale and printing of color comic supplements and had monopolized such sale and printing in violation of Section 2 of the Sherman Act; more importantly, that Hearst and NEA (not Greater Buffalo) were each parties to tying arrangements involving the licensing of color comic features and the sale of color comic supplements with the printing thereof in violation of Section 3 of the Clayton Act. Lastly, the complaint charged a vio-

* Any relief against this corporation has been abandoned.

** "App." refers to appendix; "R" refers to the record filed with the Court but not included in appendix.

lation of Section 7 of the Clayton Act by Greater Buffalo resulting from an acquisition by Greater Buffalo of the stock of International in the year 1955.

The Government eliminated the monopolization charge against Greater Buffalo in its amended complaint filed in 1965 (App. 1597-1608). In August of 1965, before trial, the Government consented to a decree merely ordering Hearst to comply with the antitrust laws (App. 520-524) and allowing the continuation of the tie-in practice (Paragraph IV C App. 522). After a trial on the merits, the District Court found against the Government on all charges (App. 1691-1706) and entered a judgment dismissing the complaint (App. 1706).

The Government failed in its attempt to prove the conspiracies charged and has taken no appeal from the District Court's decision dismissing the conspiracy charges. Accordingly much of the voluminous record is irrelevant. On this appeal there remains only the narrower question of whether or not Greater Buffalo violated Section 7 of the Clayton Act in acquiring International and if it did, what relief, if any, should follow.

The confused and tortuous course of this case over a period of ten years has been marked by innumerable inconsistent and conflicting positions advanced on behalf of the Government. Although it is difficult to discern the most notable instances of such conduct, we believe that by any standard the solemn assertion of Government trial counsel oft repeated that this action was brought to "*protect*" Greater Buffalo must loom large on the roll. At App. 1041 Government trial counsel said "The primary purpose of this suit is to stop King." At App. 686 counsel said "It (the Government) is seeking to protect the right of Greater Buffalo, as Mr. Raichle said here this morning, against

the use of tie-in's; seeking to protect the right of Greater Buffalo to get a larger share of the market by its own talent and without combining with competitors to do it." At App. 686 Greater Buffalo is described as a "victim". At R. 667 counsel said "Greater Buffalo is the victim to the extent NEA and King can tie in." Granted that the complexities of present day antitrust litigation and the esoteric character of the economic plans and theories evolved by the Antitrust Division for the alleged purpose of preserving competition are beyond the ken of the ordinary businessman and those of us who are of the garden variety of practicing lawyers, we believe that it is impossible for anyone to perceive just how the relief sought in the last remnant of this action, i.e., "relief" providing for King an "alternate source of printing from Greater Buffalo" protects Greater Buffalo or the public interest.

Our inability to understand the ways of the Government was shared by the District Court. At R. 659, the court said:

"I will never forget the day I heard the case, the opening day, there were certain positions taken by the Government I never understood yet, and they changed like the twilight changes, and I never understood that."

* This statement seems to refer to the fact that a Mr. Nicht of King Feature was bringing considerable pressure upon Mr. Walter Koessler, president of Greater Buffalo, to enter into an arrangement wherein and whereby King would become the sales agent for Greater Buffalo with an agreement on the part of Greater Buffalo not to print for any other syndicate. In candor we state that there was evidence to the effect that in 1954 and after that time Mr. Koessler, conscious of the tie in power of King, was considering a surrender to such power and the entering into of such an arrangement (App. 886). This fact is reflected in many of the Nicht memoranda (Ex. P-19, App. 1440, Ex. P-20, App. 1440, Ex. P-22, App. 1443, Ex. P-102, App. 1520) and much of the correspondence between Mr. Nicht and Mr. Koessler (Ex. P-15, App. 1432, Ex. P-16, App. 1434, Ex. P-17, App. 1438, Ex. P-18, App. 1439, Ex. P-25, App. 1458). When both Mr. Koessler and Mr. Nicht were informed by counsel that such an arrangement might offend against the anti-trust law (App. 951-953, 978-979, Ex. P-17, App. 1438), their negotiations with respect to such an arrangement were terminated (Ex. D-4, Received in Evidence, App. 887, Ex. D-5, Received in Evidence, App. 888). As we have stated, the Government has not appealed from the District Court's finding that there was no conspiracy between King (Hearst) and Greater Buffalo.

** Government's brief, p. 37.

At R. 660 the District Court said:

"I could never understand—and you may say by now you should, I still don't. Anyway, I could never understand why Hearst went out . . ."

See also R. 690 for our explanation for the change, and see further the District Court's statement in its opinion:

"No reason has been presented by the Department of Justice to explain the significant change of heart toward the defendant Hearst" (App. 1692).

In any event we pass to a more detailed discussion of the case.

Genesis of the Case

Some time in the latter part of 1955 a man named Jack R. Hornaday who had been a salesman for King working under the supervision of its sales manager Frank Nicht left the employ of King and became the president of Atlantic Features and Printing, Inc., a company formed by a group of newspapers for the purpose of licensing features and selling comic supplement printing for Southern Color Print. After experiencing some initial success in taking business away from King he began to feel the pinch of the King predatory tie in practice which he himself had utilized under the tutelage of Mr. Nicht (App. 381-382). He complained through counsel that he was being seriously handicapped by King's said trade practices and threatened to go to the Department of Justice with his complaint. Later he did go to the Department of Justice and after a grand jury investigation that resulted in a no-bill this action was commenced.

Thus, the genesis of this litigation is found in the claim that the practice of King Features in combining the licensing of its copyrighted features with the sale of printing, together with the discriminatory and predatory conduct

which the leverage this tie-in made possible, had resulted in violations of the antitrust law to the detriment of Atlantic Features.

The Parties to the Acquisition

A. Greater Buffalo

Greater Buffalo is a family-owned corporation with its principal office in Buffalo, New York (App. 853). It commenced business in 1926 with an original investment of \$3,000 (App. 854). It started by printing two small neighborhood papers on a press located in a private dwelling occupied by one of the founders (App. 855). In those early days Walter Koessler who was at all times president of Greater Buffalo solicited the advertising and functioned as a reporter and editorial writer for the fledgling papers (App. 854). In or about the year 1930 Greater Buffalo purchased a used press from the Buffalo Courier-Express and proceeded to print hand bills and circulars for stores in addition to its neighborhood papers (App. 857). During the early 1930's its meager business was augmented by printing legal notices of foreclosures and the like (App. 856). In 1932 it acquired a used press from the Syracuse Herald and began to print comic sections (App. 858). Thereafter it began to print comic sections for several papers, including papers in Chicago, Buffalo and Syracuse (App. 858). All of these papers had previously printed their own comics (App. 858). During the 1930's and 1940's Mr. Koessler and his brother Kenneth, together with one other man, constituted its sales force (App. 859). In 1936 Greater Buffalo purchased a press particularly adaptable to the printing of comic sections at a cost of \$36,000 and moved into the plant which it presently occupies on Grote Street, Buffalo, New York (App. 859). Over the years

since its early beginnings all of the earnings of Greater Buffalo have been ploughed back into the business and its expansions have been made through a redeployment of its earnings (App. 859). The Koessler family, including Walter Koessler's father, his brother, his sister and the young lady who subsequently became his wife, worked to turn out its product (App. 860). Importantly, a considerable portion of the business of Greater Buffalo was so-called commercial printing unrelated to newspapers, such as circulars, advertising, catalogs, etc. for Sears Roebuck and other nationally known firms* (App. 861, 867, 881).

As Greater Buffalo grew from its modest beginnings and more and more newspapers, which had theretofore printed their own color comic supplements, began to give their business to Greater Buffalo, Greater Buffalo became aware of the awesome tie-in power exercised by King (Hearst) through its ownership of copyrights and on various occasions its prospective printing customers were told by King that if they entered into contracts with Greater Buffalo for printing the cost of licensing the features controlled by King would be increased (App. 885, 924, 956-957, 971-973, 992).

Upon inquiry from the Court as to how Greater Buffalo was able to develop and expand its business, Mr. Koessler said, "It is a form of know-how. In later times we developed better machinery, better machinery than the printing press manufacturers put on the market. Better methods of doing it so that we cut the costs and were able to compete on costs. We were also able to compete on quality, we did a better job, and we could print—we were more

*It was the subsequent placing of a large volume of this type of business at International after its acquisition by Greater Buffalo which accounted in important part for the rehabilitation and business of the International Wilkes Barre plant (App. 1123-1125)

flexible, that is, a lot of the newspapers could print eight pages or twelve pages but they could not print ten pages or fourteen pages" (App. 864).

The ability of Greater Buffalo to print a quality product at a cheaper price than its competitors is conceded by the Government at page 7 of its brief where it states that "Greater Buffalo was the most successful and efficient comic supplement printer largely because of the technical and innovative skills of its president, Koessler." The Government admits that Greater Buffalo has a "better quality product" (Jurisdictional Statement, p. 5) and that it has "a genius for efficiency" (App. 686) and "a marvelous talent for efficiency and economy" (App. 689).

B. International

International also stemmed from a small newspaper printing operation (App. 1100). It changed its earlier name to International Color Printing Company in 1924 (App. 1101) and commenced to print color comic supplements (App. 1101). Its president was and is one Joseph J. Gorman (App. 1099). International's first color comic supplement customer was King (App. 1102). In the beginning King was having its comics printed in various plants located in Kansas City, Brooklyn, Richmond and Indianapolis (App. 1102). King was at this time selling features and also "ready print." (App. 1102). Mr. Gorman described ready print as a "combination of pages, which is to be used for a number of newspapers without changing the pages as you move from paper to paper." (App. 1102). These ready prints go to a number of papers and the only change that has to be made is in the masthead (App. 1103). Over the intervening years from about 1927 until June of 1955 International printed exclusively

for King (App. 1103) and was favored with substantially all of King's business. After 1927 International had no salesman and solicited no accounts (App. 1103). Thus, as stated in the Government's brief, p. 9, International's revenues were obtained not from newspapers but solely from King under contracts. The contract in effect in 1955 was cancellable upon six months' notice (App. 1104-1117). Mr. Gorman described the relationship between International and King in some detail at App. 1104-1115. Apparently over a long period of years Mr. Nicht was critical of the lack of efficiency of the International operation (App. 1105-1106) and at times threatened to take the business elsewhere (App. 1108-1109).

The stock of International was owned by the Govin family, the members of which lived in places remote from Wilkes-Barre where its main plant was located (App. 1110). The members of the family made no capital investment in the company after their initial loan to commence operations was repaid (App. 1109-1110). They insisted on withdrawing a considerable portion of what profits there were as dividends.

By 1955 with the working capital of International seriously impaired, with the owners of the business unwilling to make needed investments for modernization and expansion and faced with a deteriorating situation, Mr. Gorman sought and tried hard to sell the business to Hearst (App. 1112). Hearst "rejected constantly his importunities to buy the plant." (App. 1112). Knowing of no other potential purchaser (App. 1116). Mr. Gorman then approached Mr. Koessler of Greater Buffalo in his efforts to sell the business (App. 1113-1114). Mr. Gorman said that as a "matter of courtesy" he informed Mr. Nicht of his approach to Mr. Koessler (App. 1115). Negotiations be-

tween Mr. Gorman and Mr. Koessler resulted in the sale of the stock of International for its book value which was \$575,000. The sale was consummated on June 23, 1955 (App. 1117).

Summary of Argument

We contend that the District Court correctly defined the relevant market and that the acquisition of International by Greater Buffalo neither restrained competition between Greater Buffalo and King, nor eliminated competition between Greater Buffalo and International.

We contend further that under the peculiar characteristics and circumstances of the industry involved that the effect of such acquisition did not and could not substantially lessen competition or tend to create a monopoly, and further that any minimal or transitory anti-competitive effects of the acquisition have long since been dissipated.

Finally, we contend that there is nothing in the circumstances of this case which justifies the divestiture relief sought for the purpose of creating a "viable independent color comic supplement printer capable of providing King with an alternate source of printing from Greater Buffalo."* In this connection we believe it is clear that there should be no divestiture of either the assets owned by International at the time of the acquisition or divestiture of the Sylacavga plant built by Greater Buffalo with its own resources five years after Greater Buffalo purchased International.

* Government's brief, p. 37.

ARGUMENT.**I.****The Relevant Market.**

The Government evidently made no survey of the market. It offered nothing that purported to be the result of a market study or a survey on its own part. Instead, it relied only upon some figures compiled from an informal so-called survey made by International (Government's brief, p. 11). Exhibit P-63, App. 1824 is a letter transmitting this so-called survey to Mr. Koessler and the letter calls attention to the survey's infirmities. The survey was characterized by Mr. Hammond as "very unreliable" and "fraught with nothing but guesswork." (App. 115-116). The Government does not state whether the figures appearing are weekly figures or annual. The fact is that they are weekly (App. 189).

We believe that the Trial Court was correct in its following statement:

"Examining all the testimony and the relations between the parties, the court finds that the significant lines of commerce involved in this action should be divided into two distinct and separate categories: (1) the printing of color comic supplements for newspapers which do not print their own, and (2) the printing of color comic supplements for syndicates engaged in the sale of copyrighted comic features to newspapers. These are the lines of commerce—to treat them together as one line of commerce, *i.e.*, the printing and sale of color comic supplements, would be to ignore the tremendous leverage of the syndicates which control the copyrighted features. The testimony of Walter Koessler and other witnesses in his case has established firmly that the syndicates, and in particular King, have a unique position by virtue of the legal monopoly which they have over the copyrighted features. The court is of the opinion that the

peculiar characteristics and business uses of copyrighted features justify considering printing for syndicates as a separate product market" (App. 1696-1697).

Accordingly, International and Greater Buffalo were not in competition one with the other prior to the acquisition. It should be noted that the complaint charges that the competition claimed to have been eliminated by the acquisition is that "between the defendants Greater Buffalo and International" (Paragraph 27, App. 12). This same allegation was carried over into the amended complaint filed four years later (Paragraph 27, App. 1605). This is the claim that the defendant was called upon to meet and successfully did meet at the trial. In the Government's brief to this Court the charge seems to be that the acquisition of International violated Section 7 of the Clayton Act because it restrained competition between Greater Buffalo and King. Furthermore it is interesting to note that in its jurisdictional statement the Government stressed the "impact of the merger (acquisition) upon competition in the selling market." (Government brief p. 19). At page 22 of the Government's brief the statement is made that "In this case the competition most substantially and dramatically lessened by the acquisition was between Greater Buffalo and King in the sale of comic supplemental printing, which was a vital aspect of the printing business." In other words, the claimed restraint is still in the selling market. It is clear that International did not engage in the selling market but was merely a captive printer for King. It had no salesman. It had no contracts with newspapers. It had no means of acquiring such contracts. In its post trial brief to the District Court the Government argued that printing and selling were separate markets (plaintiff's post trial brief, pp. 3-14). In its brief to this Court Government counsel withdraws these arguments by stating

that they "seem artificial and unimportant" (Government brief p. 19). Here again we are met with one of the ever changing Government contentions.

Whatever the market may have been, the District Court correctly found that Greater Buffalo, in acquiring International, did not acquire an additional share of the market because it had no assurance that King would continue to do business with International (App. 1701-1702). It is true that Greater Buffalo had high hopes of obtaining King's business for International—in fact, Greater Buffalo was negotiating with King for such business. The stubborn fact persists, however, that Greater Buffalo did not have a contract with King at the time of the acquisition, or, as the Government puts it at p. 33 of its brief, a "legally enforceable right to King's business", and therefore took a calculated business risk in purchasing International (App. 876).

II.

The acquisition did not have the effect of substantially lessening competition or did it tend to create a monopoly. Furthermore, any anti-competitive effects of the acquisition have long since been eliminated or significantly mitigated by subsequent events.

The structure of the relevant market, whether it be the market found by the trial court or that now contended for by the Government, makes it clear that any alleged anti-competitive effects of the acquisition could not in the nature of things be significant. Under the peculiar circumstances prevailing in this industry even reliable percentage figures alone would tell nothing about the conditions of entry. It was established at the trial, and is not effectively disputed

in the Government's brief* to this Court that "any newspaper can readily enter the market" (App. 499, 864). It was further established that some newspapers for which Greater Buffalo has printed have "gone back to printing their own" (App. 864)—all others could (App. 920). In addition, many newspapers have a capacity not only to print their own color comic supplements, but the capacity to print for other newspapers, as, for example, in the case of the Ft. Worth Star Telegram which prints for other papers (App. 1823). Footnote designated "7" at p. 11 of the Government's brief makes reference to printing done by newspapers for "other newspapers."

In view of the fact that the intended beneficiary of the relief sought in this action seems to be Hearst,** we call attention to the important fact that the *Government's* exhibit P-6 contains the following legend:

"Column 3 shows Hearst plants as color comic printers, for the reason that the Chicago American and Pittsburgh Sun-Telegram, both non-Hearst newspapers, are printed in the Hearst Chicago plant. These runs total 2,956,434 copies in 4's.

Further—Hearst plants having a surplus capacity of 12,500,000, *thus are capable of handling this output for King, a Hearst Division*" (App. 1823) (italics ours).

The record establishes the fact that healthy and vigorous competition has prevailed throughout the industry since the acquisition (App. 1241-1244). For example, Southern Color Print, which company, according to the Government's chart on page 11 of its brief, was printing only 477,714 four-page sections at the time of the acquisition, was printing 3,400,000 such sections at the time of the

* See pp. 28-29 of Government's brief

** See discussion *infra*, IV.

trial in 1965* (App. 1215). This business was taken by Southern Color Print in competition from Greater Buffalo (Dixie Color) (App. 1215, 1242). Star Color Printing (not even mentioned in the Government's chart at p. 11 of its brief) which was in business in 1955 took substantial business from Greater Buffalo between 1955 and the time of the trial (App. 1242). Greater Buffalo lost business to all of these companies between 1955 and the time of the trial (App. 1241-1244). Acme Color Press which according to the Government's dubious chart was printing 5,001,714 sections in 1955, had built a new plant and added new equipment (App. 1126) and was printing 7,700,000 sections at the time of the trial (App. 425). All of the other companies which were factors in the business in 1955 were factors at the time of the trial, including World Color Press, Bridgeport Color Press and others (App. 1241-1243). Subsequent to 1955 and before the trial Eastern Color Printing Company added to its capacity several single presses and at the time of the trial was installing a "new \$1,000,000 press completed by Hoe and Company" (App. 1126).

Mr. Jack Hornaday, whose original complaint against King (Hearst) occasioned this litigation, described the competition between Southern Color Print and Greater Buffalo in important part at App. 366. He said in some cases his product was better than that of Greater Buffalo; that they "look about the same"; and further that they are "not enough different to make the reader of a newspaper or ordinarily the publisher of a newspaper to see any great difference in them" (App. 366). He said that in some cases he could give better service because he

*Translated into dollars, Southern Color Print was doing \$600,000 in point of volume in 1955 and at the time of the trial it was grossing \$3,300,000 for its printing (App. 1126).

was closer to the customer and that although Southern Color Print didn't print for as many papers as did Greater Buffalo, Southern Color Print could therefore "probably give a little more individual service" than Greater Buffalo could (App. 366). He said that he could not point to a single act or deed on the part of Greater Buffalo Press, International Color Printing or Dixie Color Printing of which he would complain or which he would "even criticize" (App. 365).

It was on the basis of the foregoing and the testimony of many witnesses all of whom had been in the color printing business for over three decades that the District Court was able to evaluate the effect of the acquisition made ten years earlier on competition in the industry as a whole. The court had not only the testimony of Mr. Koessler and Mr. Gorman whose experience totaled 85 years but also the testimony of Jack Hornaday of Atlantic, Robert Smith of Southern Color and Earl Anderson of NEA. These witnesses constantly referred to the loss to one another of accounts among the various competing printers and syndicates. To prevail, it was incumbent upon the Government to prove that the acquisition of International by Greater Buffalo had a reasonable probability of substantially reducing competition. A mere possibility would not be enough. *United States v. DuPont De Nemours & Co.*, 353 U. S. 586, 598 (1957); *Federal Trade Commission v. Consolidated Foods Corp.*, 380 U. S. 592, 598 (1965). Indeed, the testimony convincingly demonstrated that the color comic supplement industry is "a field where merchants are in a continuous daily struggle to hold old customers and to win new ones over from their rivals". *United States v. El Paso Natural Gas Co.*, 376 U. S. 651, 659 (1964). Because the syndicates including King and NEA were able

to have their supplements furnished by a printer of higher quality on which they could dependably rely for delivery to their customers and because the product which they furnished to newspapers of smaller circulation via the "make-ready" process was stabilized and improved, the possibility of anti-competitive effects flowing from the acquisition was balanced by the spirited competition among all the remaining competitors which the evidence showed had prevailed in the intervening ten years. The witnesses testifying to this competition had all spent their business careers in the trade and were "skilled in the business which they have carried on . . . [a]nd since there is no testimony to the contrary and no reason appears for doubting the accuracy of observation or credibility of the witnesses, their statements should be accepted." *International Shoe Company v. Federal Trade Commission*, 280 U. S. 291 at 299 (1930). The District Court gave full credit to this voluminous testimony and concluded (App. 1702) that

"The acquisition by Greater Buffalo of International and its operation by Greater Buffalo over the past fifteen years have not resulted in the lessening of competition in the color comic supplement industry and, in fact, competition between Greater Buffalo, King, NEA, Southern, Acme, Eastern and the other companies engaged in the industry has increased. Indeed from all the evidence, it appears that the companies across the country have benefited, and that competition prevails in the industry unfettered by any agreement by any of the principals in this case."

III.

International if not a "failing company" was destined to become one.

While International was not insolvent within the bankruptcy sense of the term and was probably not a "failing company" within the strict application of the rule announced by this court in *Citizens' Publishing Co. v. United States*, 394 U. S. 131, 138 (1970), it was fading rapidly as a competitive factor in the industry. Its working capital was impaired, indeed substantially depleted. Its machinery was obsolete. Its only customer, Hearst, was about to take its business elsewhere (App. 1108-1109). As observed at page 34 of the Government's brief, International's growth had "stagnated." Certainly its outlook was dim, and its ultimate failure was reasonably predictable. The man in the best position to know, Mr. Gorman, who evidenced a complete knowledge of the industry, knew of no purchaser other than Greater Buffalo (App. 1116).

Government counsel argues that International's failure was hardly possible so long as King remained dependent upon International for printing but King was not dependent upon International for printing. See detailed discussion, *infra*. Important to be remembered is the fact that International was first offered to King and King would not negotiate for its purchase at any price (App. 1112-1113). Certainly within the context of this case and under the peculiar circumstances of this industry International was a failing company within the ordinary meaning of the term and the strict application of the rule of the *Citizens Publishing Co.* case should not be applied.

IV.

The divestiture of neither Dixie Color nor any of the assets of International at the time of the acquisition is called for or justified in the circumstances of this case.

We are astonished to read at p. 37 of the Government's brief the following statement:

"Effective relief in this case—which should create a viable independent color comic supplement printer capable of providing *King* with an alternate source of printing from Greater Buffalo—requires divestiture of both the assets owned by International at the time of the acquisition and the Sylacauga, Alabama plant planned by International, but *constructed and operated after the acquisition by Dixie Color Printing Corp., a Greater Buffalo subsidiary*" (Italics ours).

This statement is cumulative to the effect that the intended beneficiary of the Government's action is the wrongdoer whose conduct occasioned the commencement of the action.* Furthermore the Government's statement is preposterous in the light of the fact that Hearst, of which King is a mere division, has by virtue of its color printing plants in Chicago, San Francisco and other idle equipment, the capacity, indeed the excess capacity, with which to constitute itself an "alternate source of printing." (Testimony of Gorman, App. 1109, 1128, 1132-1133; Ex. P-6, App. 1708 at 1777, 1823; Ex. P-103, App. 1523-1529; Ex. P-104, App. 1529-1530; Ex. P-105, App. 1530-1532; Ex. P-106, App. 1532-1537; testimony of Hammond, App. 246, 248; deposition of Hornaday, May 29, 1961, index No. 90, vol. 1, p. 120; Findings of Fact, May 26, 1970, App. 1693.) Additionally, Hearst could turn to some or all of the other printers, including Acme Color Printing Company, Eastern Color Printing Company, Star Printing Company, Southern Color Printing Company and World Color Printing

Company (testimony of Gorman, App. 1108; testimony of Koessler, App. 862-863; testimony of Clinton, App. 221; Findings of Fact, May 26, 1970, App. 1696). In fact King from time to time threatened so to do (App. 1108-1109).

The statement at p. 40 of the Government's brief that the Sylacauga plant "was more the realization of International's plans than Greater Buffalo's, and must be viewed as a fruit of the unlawful acquisition", is contrary to the finding of the trial court (App. 1700) and is made against the overwhelming weight of the evidence. Since transportation costs have always been and are an important element in the ability of a printer to sell his product, Greater Buffalo long before its acquisition of International, planned and furthermore committed itself to build a plant in the south (Ex. D-5, App. 1592 Received in Evidence App. 888).

As early as 1947 (eight years before Greater Buffalo purchased International) Kenneth Koessler of Greater Buffalo made an extensive tour of the South in company with a representative of NEA which at that time was considering entering into a joint venture with Greater Buffalo for the construction of a plant in that area (App. 231, 869-870.) They made a report on locations, costs and the time required to put a plant on a paying basis (App. 870). NEA was unwilling to make such an investment and undertake the risk; hence, the proposed joint venture as such came to naught (App. 870).

Greater Buffalo was prevented at that time from going forward on its own because of the acute shortage of newsprint in that area and temporarily directed its interest to the building of a plant in Lufkin, Texas (App. 871). It

* As the trial court observed, "No reason has ever been presented by the Department of Justice to explain the significant change of heart towards the defendant Hearst." (App. 1692.)

did not, however, abandon its plans for a facility in the deep south and in November of 1950 (five years before its acquisition of International) made a firm commitment to the Journal Constitution, an Atlanta newspaper, to erect such facilities *as soon as newsprint was available and the government building restrictions, imposed, as a consequence of the Korean War, permitted* (App. 871, D-5, App. 1592, Received in Evidence, App. 888).

It was therefore, firmly established that in 1950 Greater Buffalo was committed to a southern plant and intended to open such a plant when economic conditions would permit it (App. 872).

In 1953 or early 1954, prior to the time that the acquisition of International was even considered, Ralph Watt, the general manager of the Coosa River Paper Company, came to Buffalo to interest Greater Buffalo in the construction of a plant in Sylacauga (App. 872-873). He advised Koessler that his company was planning to increase its capacity and was seeking business to utilize the additional newsprint that would be available on the completion of their additional paper machines (App. 872-874). Watt was familiar with the arrangement Greater Buffalo had concluded with Southland Paper Company at Lufkin and suggested that his company would make a similar proposal to help finance the construction of a printing plant and to sell newsprint at the standard rates less the transportation costs the mill traditionally afforded newspapers (App. 872-874). Koessler informed Watt that Greater Buffalo was interested in such a plant (App. 873). By that time Greater Buffalo was deeply involved in the planning and construction of the Lufkin plant and no immediate steps were then taken to progress the Sylacauga proposal (App. 872).

We cheerfully concede that in the meantime Gorman acting for International, and at the insistence of Nicht, was investigating the possibility of a plant in the deep south (App. 1118). The construction of such a plant by International became of interest to King by the middle of 1954 after King learned that Greater Buffalo had committed itself to the construction of a printing plant at Lufkin (Ex. P-53, App. 1474. Received in Evidence, App. 1141). King refused to either finance the erection of an International plant in the south or negotiate with International a long term contract at rates which would permit the financing of such a plant (App. 1118-19). The fact that International had never entered into a commitment to erect a plant at Sylacauga or any other place in the south was firmly established by the testimony and by every pertinent document in evidence in this case. Gorman's testimony on this subject is summed up in the following excerpt:

"Q. Let me ask you a flat question. At the time of the acquisition of the stock of International by Greater Buffalo, did International have any commitment of any kind to build a plant in Sylacauga?

A. Never. International never had a commitment of any kind at any time to build a plant in Sylacauga.

Q. Did they have the means to finance the building?

A. Did not have the means.

Q. Was Hearst willing to finance the building?

A. Hearst was not" (App. 1119, see also App. 1183).

The paper company at one time proposed to sell newsprint at less than the market price and to advance the monies necessary for the construction of a plant provided it was underwritten by Hearst, but this offer was almost immediately withdrawn (App. 1146-1148, 1173-1174). As a matter of fact the paper company would not even sign a

contract with International but did sign one with Hearst in December of 1954 to supply newsprint at the market price (App. 1148). This contract incidentally was never utilized and was not assigned to either Greater Buffalo or International (App. 188). The Sylacauga plant built by Greater Buffalo eventually obtained its newsprint from the paper company on an entirely different basis and no benefit accrued to either International or Greater Buffalo from the contract between Hearst and Coosa River Paper Company (App. 873-874, 1169-1170).

Subsequent to the acquisition of International by Greater Buffalo in June of 1955 Gorman, at the direction of Koessler, made a further and intensive investigation of areas in the south, looking toward the establishment of a southern plant for Greater Buffalo. He visited Chattanooga, Knoxville, Nashville and Cleveland, Tennessee, among other places (App. 1121). In connection with this investigation and on July 15, 1955, after the acquisition Gorman wrote 30 letters to various cities in Tennessee asking them for the same concessions that were available to any company erecting a paper plant in Sylacauga (App. 1183-84). At the conclusion of this investigation and in the latter part of 1955 or early 1956 Gorman reported to Koessler and recommended Sylacauga as the best location for a plant (App. 1121). Koessler on the other hand felt that the plant should be in Chattanooga or in Nashville near a source of newsprint to be supplied by the Bowater Paper Company but in the last analysis he deferred to Gorman's wishes and it was determined that Greater Buffalo through a wholly-owned subsidiary, Dixie Color Printing Company, would build the plant in Sylacauga (App. 1121).

Early in 1956, Hammond, who was the financial officer of Greater Buffalo and who had had no previous connection

with International, accompanied Gorman to Sylacauga and consulted an attorney for the purpose of organizing Dixie Color Printing Company (App. 233). This company was organized and financed as a wholly-owned subsidiary of Greater Buffalo which has at all times owned all of the company's capital stock (App. 234). Although Gorman and Clinton, an employee of International, were on the original board of directors of the company, the majority of the board was controlled by the officers of Greater Buffalo including both the Koesslers and Hammond (App. 233-234).

Subsequently, the Sylacauga plant was constructed entirely under the direction of Greater Buffalo. Although certain of the work was carried out at International, that company was by that time a subsidiary of Greater Buffalo, and was reimbursed for all of its expenses incurred in the preparation of the machinery to be used at Sylacauga (App. 234-239, Ex. D6, D7, D8 Received in evidence App. 236, 238, 239). This includes Press 2022 which was purchased *after* the acquisition at the direction of Mr. Koessler (App. 155-156, 1192, see also App. 59-61, 69-70). Both the plans of the plant and the reconstruction of the press to be used were in fact a duplication of Greater Buffalo's Lufkin plant (App. 1122). The construction was financed entirely by Greater Buffalo Press (App. 234).

The government contends that the construction of Greater Buffalo's plant at Sylacauga was made possible only by the acquisition of International (Government Brief 14, 38). The plain fact is that both the Coosa River Paper Company and the City of Sylacauga could not have cared less whether the printing plant was owned and operated by a company named International or by any other company. This is illustrated by Clinton's testimony

that the people in Sylacauga referred to the facility as the "funny paper plant" (App. 223, 227). The paper company was interested in selling newsprint and the city was seeking an industry which would afford jobs (App. 872). When Mr. Koessler determined to double the size of the plant and pattern it after the Lufkin plant the Chamber of Commerce readily raised the money to purchase and grade the necessary land and conveyed the title to it to Greater Buffalo (App. 195).

Government trial counsel argued that the Sylacauga plant was some kind of "birth-right" acquired from International and made the claim that "when Greater Buffalo came in they changed certain details and provided certain things" (App. 1205). The validity of this argument may be gauged by the fact that the "details" that were changed consisted of the size of the plant which was greatly increased (App. 1122), the plan of the plant and the design of the press incorporating Greater Buffalo's unique preregistry system (App. 192). In addition, the "certain things" provided by Greater Buffalo consisted of the money without which the plant could not have been built (App. 194) and the know-how without which it could never have been successfully operated (App. 62).

As we have noted above, Greater Buffalo was committed as early as 1950 to construct a plant in the deep south and at the time Sylacauga was opened Greater Buffalo held the following printing contracts which were at the time of the trial being produced by its wholly-owned subsidiary Dixie Color Printing Corporation at Sylacauga (Ex. D-3 Received in Evidence App. 877):

The Atlanta Journal	525,000	Circulation
The Birmingham News	230,000	"
The Columbus Dispatch	300,000	"
The Miami Herald	410,000	"
The Louisville Courier-Journal	330,000	"
The Washington Star	340,000	"
The Mobile Press Register	95,000	"
The Nashville Tennessean	225,000	"
The Memphis Commercial Appeal	270,000	"
The Knoxville Journal	150,000	"
The Norfolk Virginian Pilot	160,000	"
The Cincinnati Enquirer	310,000	"
<hr/>		
Total	3,345,000	

When the prospect of Sylacauga became a reality to King Mr. Nicht made desperate attempts to negotiate an agreement with Greater Buffalo which would give King the right to be the exclusive sales agent for the printing at that plant and would prevent NEA from using Greater Buffalo's southern facilities. When this attempt failed, King joined in the government's application to prevent the opening of the Sylacauga plant. After the District Court apropos an application to vacate a preliminary injunction permitted the limited operation of the Sylacauga facilities King was let out of the case with an innocuous consent decree and now expectantly awaits the outcome of the government's efforts to afford it an "option" to purchase the plant through the medium of a divestiture order.

The circumstance that the Sylacauga plant constructed five years after the acquisition and operated independently of King and without any restraint or allocation of customers is further illustrated by the fact that in addition to the circulation of 3,345,000 printed through contracts held by Greater Buffalo Press it is presently printing for papers having a circulation of 852,000 on contracts held by King and for papers having a circulation of 330,000 on

contracts held by NEA (Ex. D-3 Received in Evidence App. 877). Thus, 74% of the supplement printing at Sylacauga is on Greater Buffalo contracts, 19% on King contracts and 7% on NEA contracts. Moreover, 30% of the printing done at Sylacauga consists of commercial business unrelated to color comic supplements all of which has been obtained and placed by Greater Buffalo and if this printing is taken into account Greater Buffalo is supplying 82% of the Sylacauga business, King 13% and NEA 5% (Ex. D-3 Received in Evidence App. 877).

The limited operation of the Sylacauga plant effected transportation savings to newspapers in the area of approximately one quarter of a million dollars each year (App. 875). The plant affords direct employment to approximately 75 people and purchases over \$2,000,000 of newsprint in the south (App. 875).

On February 19, 1963, the District Court, after the taking of testimony on the motion of Greater Buffalo to lift a Preliminary Injunction made the following findings of fact:

"3. The public interest requires that the Sylacauga plant be permitted to open and operate under conditions that will afford an opportunity for it to be operated in open and fair competition in the business of printing color comic supplements in the southeastern area of the United States."

"4. The unrestricted operation of the Sylacauga plant by Greater Buffalo Press, Incorporated or its subsidiary Dixie Color Printing Corporation will not cause damage or injury to Southern Color Printing Corporation or Atlantic Features and Printing Company and the continuance of the preliminary injunction is not necessary for the protection of either of these companies or for the maintenance of effective competition in the color comic supplement industry in the southeastern portion of the United States."

"7. The operation of the restraining order and the preliminary injunction has restricted competition in the sale and printing of color comic supplements in the southeastern part of the United States and has deprived newspaper publishers of the benefit of such competition, including substantial savings in transportation costs." (Order dated February 19, 1963 App. 513, 514-515).

Thus the District Court found that the unrestricted operation of the Sylacauga plant by Greater Buffalo will not effect competition and these findings eliminate any basis for the divestiture sought by the government in this action. The record developed at the trial on the merits substantially buttressed these findings and no grounds exist for vacating them. The record amply demonstrates that healthy competition exists between NEA, King, Southern and Greater Buffalo for printing in the southeast and the government can point to not a single complaint with respect to a restrictive or predatory practice on the part of Greater Buffalo.

It is undisputed that the construction of Sylacauga was undertaken five years subsequent to the acquisition of International by Greater Buffalo and that the building and the machinery were paid for by Greater Buffalo (Ex. D-6, D-7, D-8 Received in Evidence 236, 238, 239). Title to the property was acquired by Dixie Color Printing Company, a Greater Buffalo subsidiary which was entirely unrelated to International, and none of the assets which International owned prior to its acquisition except two or three items of negligible value were incorporated into the new facility of Sylacauga (App. 196-204 Proceedings of October 26, 1961 Ex. D-3 Received in Evidence App. 204). Under these circumstances it is well established that equitable principles as well as constitutional considerations flowing from the due process clause foreclose the imposition

of the sanction of divestiture with respect to property acquired subsequent to an acquisition even if the acquisition could be found to be in violation of Section 7 of the Clayton Act. *Reynolds Metals Company v. Federal Trade Commission*, 309 F. 2d 233 (DC Cir. 1962). As we have demonstrated, the facts established and found in the case at bar are very different from the facts found in *United States v. Aluminum Company of America*, 247 F. Supp. 308 (E. D. Mo.), *aff'd* 382 U. S. 12, cited at pp. 38-39 of the Government's brief.

We believe that all that was said by Judge Burger on the subject of the divestiture of a "new plant built after the acquisition" in *Reynolds Metals Company v. Federal Trade Commission*, 309 F. 2d 223, 230 (1962) applies to the case at bar. The obsolete presses and equipment owned by International at the time of the purchase of International's stock by Greater Buffalo, like the assets of Arrow in the *Reynolds* case, are separable from "after acquired assets" in the Sylacauga plant. It is only whatever assets were at the Wilkes-Barre plant at the time of the acquisition that could be the subject of a divestiture, even if a case for any divestiture had ^{been} ~~then~~ made out.

The case at bar presents a far stronger position for the denial of divestiture than the *Reynolds* case. Sylacauga was not designed or intended to house the previously existing assets or equipment of International, nor was it used for such a purpose. Moreover, the Sylacauga plant was not set up to service International's accounts, a circumstance which is clearly demonstrated by the fact that 87% of its present volume consists of printing Greater Buffalo and NEA work which had never been printed at the International plant at Wilkes-Barre (Ex. D-3 Received in Evidence App. 877).

In the light of all of these circumstances it is submitted that the government has failed to sustain the burden of demonstrating why Greater Buffalo should be deprived by a divestiture order of the fruits of a calculated business risk upon which it has expended in the neighborhood of \$3,000,000.

Certainly there is nothing in antitrust law that makes anything and everything conceived or dreamed of by an acquired company, no matter how impossible of accomplishment by it, forbidden fruit for the acquiring company, especially where the acquiring company had conceived of the same thing before the acquired company did so and proceeded *after* the acquisition with its own resources to a fulfillment of the concept.

Having established, as we believe we have, that under no circumstances can there be a divestiture order with respect to Sylacauga, we turn to the argument of the Government that there should be a divestiture order with respect to the "assets owned by International at the time of the acquisition."^{*} We believe that we have demonstrated that there was no violation of Section 7 of the Clayton Act and that there were no anti-competitive effects flowing from such acquisition. We believe we have also established that in the context of this case International was in the nature of a "failing company." Furthermore, and importantly, much that we have said concerning the inequity of an order directing divestiture on the part of Greater Buffalo for the benefit of King of the Sylacauga plant applies to any divestiture of the acquired assets of International.

Importantly bearing on the matter of the requested divestiture Government trial counsel based his request for

^{*} Quoted language is from the bottom of p. 37 and top of p. 38 of Government's brief.

the same largely upon suggested findings that Greater Buffalo had conspired to monopolize the business. The District Court found that Greater Buffalo had not so conspired and no appeal has been taken from such findings. See footnote designated "3", page 5 of Government's brief and footnote designated "2" at page 4 of Government's jurisdictional statement pertaining to admitted "changed circumstances since the complaint was filed."

The Government on this appeal harks back to a similar attempt at the trial and in so many words seeks to *equate* "Effective relief in this case" with something which it says will "create a viable independent color comic supplement printer capable of providing *King* with an alternate source of printing from Greater Buffalo" (Government's brief p. 37 *italics ours*).^{*} This is the first case which our research discloses in which the drastic remedy of divestiture is sought against one described as a "victim" in favor of one conceded to be a predator—to say nothing of the fact that the predator was given and refused the opportunity to buy the acquired company (App. 1112-1113).

The Government's effort to make Hearst a printer for King is especially incongruous in the light of the fixed and determined policy of Hearst not to print for King (App. 1112-1113). Mr. Gorman testified that Hearst "rejected constantly his importunities to buy the (International) plant" (App. 1112). Mr. Nicht's superior, a Mr. Greene, said that the "printing business was a headache" and indicated that Hearst's interests would not be served by

^{*}In all good humor we observe that it is hard to reconcile this misdirected bit of knight errantry with government trial counsel's statement to the effect that "*If King was before this court it would be thrown out*" (R. 667).

Trial counsel in the course of his remarks to the District Court stated "Greater Buffalo is the *victim* to the extent NEA and King can tie in" (R. 667).

going into the business (App. 1113). In reaching such decision Mr. Greene pointed out that "Woolworth's sold 50,000,000 gumdrops a year and never made one and made money" (App. 1113).

Conclusion

During the course of this protracted litigation the operations of the color comic supplement industry have been the subject of painstaking scrutiny for more than ten years. It is submitted that the record herein discloses not only that healthy and intense competition prevails in the industry but also that by virtue of the force of circumstances, including *easy actual and potential entry* by newspapers, the industry is relatively immune to threats of monopoly or restraint of trade. In addition, the facts developed lend support to the heartening conclusion that a small family business enterprise without recourse to outside financing can still attain and preserve a significant position in industry through its ability to produce a good product at a reasonable price. This has been the traditional genius of the free enterprise system and this record demonstrates that it still flourishes. The present litigation and the vigorous manner in which it has been pursued by the Antitrust Division of the Department of Justice have at least accomplished a result to the extent that it has been once again demonstrated that under our system of government all phases of economic and industrial activity are constantly subject to governmental investigation with respect to the freedom of competition that prevails in a particular phase of commerce. Greater Buffalo Press has been called to account for the conduct of its business affairs and has demonstrated conclusively in this litigation that its operations have resulted in neither monopoly nor any re-

straint of competition;* in fact, the only inference that can be drawn from this record is that Greater Buffalo Press and the innovations it has effected in the industry have resulted in fostering competition and challenging the dominance of the large corporate enterprise which formerly controlled the field of color comic supplements.

In the light of all of the circumstances it is submitted that the judgment appealed from should be affirmed.

Dated: April 8, 1970.

Respectfully submitted,

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*Mr. Jack Hornaday, whose original complaints against King (Hearst) occasioned this action, testified six years after the acquisition in part as follows:

"Q. —can you tell me a single act or deed on the part of the Greater Buffalo Press, International Color Printing or Dixie Color Printing, of which you complain or which you would even criticize?

"A. No, I don't recall anything, sir" (App. 365).

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* GREATER BUFFALO PRESS, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

No. 821. Argued April 19, 1971—Decided June 1, 1971

The United States brought this civil antitrust suit charging that the acquisition by Greater Buffalo Press (Buffalo) in 1955 of all the stock of International Color Printing Co. (International) violated § 7 of the Clayton Act; and that Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assn. (NEA), and others had conspired to restrain the sale to newspapers of the printing of color comic supplements in violation of § 1 of the Sherman Act. Before trial a consent decree was entered against Hearst. Buffalo, which does not control ownership of features or license them, prints the color supplements for newspapers and sells them. International prints color supplements only for King, which controls many popular comic features and is a licensor. International's owners wanted to sell rather than raise capital for modernization and expansion. International paid dividends every year, and in the year of sale its profits increased. Only King and Buffalo were considered as prospective purchasers; no others were even approached. After acquiring International, Buffalo controlled about 75% of the independent color comic supplement business and, through International, it entered into a 10-year contract with King to supply King's printing. The District Court dismissed the complaint after trial. As to the Clayton Act claim, it found two distinct lines of commerce: (1) printing of color comic supplements for newspapers not printing their own, and (2) printing of color comic supplements for syndicates selling copyrighted features to newspapers. That court also found the acquisition to be within the "failing company" exception to § 7 of the Clayton Act. The

Syllabus

United States appeals only from dismissal of the Clayton Act claim. The court did not reach the question of remedy. *Held*:

1. The line of commerce here is the color comic supplement printing business, which includes the printing of the supplements and their sale, and the "area of effective competition" encompasses the business of Buffalo, International, and King. While there may be submarkets within this broad market, "submarkets are not a basis for the disregard of a broader line of commerce that has economic significance." Pp. 3-5.

2. The test of § 7 of the Clayton Act, whether the effect of an acquisition "may be substantially to lessen competition," is met here by Buffalo's control of about 75% of the independent color comic supplement printing business. P. 5.

3. The District Court erred in finding that the acquisition was within the "failing company" exception, as the two requirements, (a) that International's resources were "so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure," and (b) that there was no other prospective purchaser, were not satisfied. P. 6.

4. The mere passage of time is no barrier to the divestiture of stock illegally acquired. P. 6.

5. The case is remanded to the District Court which has the initial responsibility of the drafting of a decree that will provide an appropriate and effective remedy. P. 7.

— F. Supp. —, reversed and remanded.

DOUGLAS, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 821.—OCTOBER TERM, 1970

United States, Appellant,	}	On Appeal From the United
v.		States District Court for
Greater Buffalo Press,		the Western District of
Inc., et al.		New York.

[June 1, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust case brought by the United States charging a violation of § 7 of the Clayton Act,¹ 15 U. S. C. § 18, 64 Stat. 1125. The main thrust of the case involves the acquisition by Greater Buffalo Press, Inc. (Greater Buffalo) of all the stock of International Color Printing Co. (International). The complaint, at the secondary level, charged that Greater Buffalo, Hearst Corp., through its unincorporated division King Features Syndicate (King), Newspaper Enterprise Assoc. Inc. (NEA), and others had conspired to restrain the sale to newspapers of the printing of comic supplements in violation of § 1 of the Sherman Act, 15 U. S. C. § 1, 26 Stat. 209. It also charged that Hearst and NEA were viola-

¹ Section 7 provides in part:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

tors of certain tying arrangements involving the licensing of comic features and the sale of comic supplements.²

Before trial a consent decree was entered against Hearst, enjoining King from entering into any agreement limiting competition in the printing of color comic supplements and barring the tying arrangement.

After full trial the District Court dismissed the complaint.³ The case came here under § 2 of the Expediting Act, 15 U. S. C. § 29, 32 Stat. 823. We noted probable jurisdiction, 400 U. S. 990. We reverse the judgment below.

The case involves the comic supplement business used weekends by most newspapers. Some papers print their own comic supplements; others purchase them.

Greater Buffalo prints color supplements for newspapers and sells them.

International prints color comic supplements for King only.

Most color comic supplements are printed by companies like Greater Buffalo and sold to newspapers. But individual newspapers contract for the purchase of comic features and it is those comics that Greater Buffalo prints for the particular papers.

The most popular comic features used by major metropolitan papers are controlled by King.

Greater Buffalo has no control over the ownership of features and therefore does not license them. As noted, however, King is a licensor; and moreover, it prints "ready-print" supplements which are preprinted and supplied to many newspapers only with masthead change.

The District Court declared that the acquisition of International by Greater Buffalo has not, and will not,

² A monopolization charge against Greater Buffalo was eliminated by an amended complaint.

³ The United States did not appeal from the dismissal against NEA.

result in a substantial lessening of competition in the color comic supplement industry, and therefore did not constitute a violation of § 7 of the Clayton Act.

The basic error of the District Court, in our view, was in its finding that the significant lines of commerce involved in this action should be divided into "two distinct and separate categories: (1) the printing of color comic supplements for newspapers which do not print their own, and (2) the printing of color comic supplements for syndicates engaged in the sale of copyrighted comic features to newspapers. These are the lines of commerce—to treat them together as one line of commerce, i. e., the printing and sale of color comic supplements, would be to ignore the tremendous leverage of the syndicates which control the copyrighted features."

As we read the record, the printing of color comic supplements and their sale are component parts of the color comic supplement printing business. One firm or company may both print and sell; another may print yet sell through a third organization, as does International through King. The "area of effective competition," *Standard Oil Co. v. United States*, 337 U. S. 293, 299–300, n. 5, comprises the business of Greater Buffalo, International and King. There may be submarkets within this broad market for antitrust purposes (*Brown Shoe Co. v. United States*, 370 U. S. 294, 325), but as we said in *United States v. Phillipsburg National Bank*, 399 U. S. 350, 360, "submarkets are not a basis for the disregard of a broader line of commerce that has economic significance."

The District Court, proceeding from its premise as to the relevant market, analyzed the effects on the competition between Greater Buffalo and International resulting from the purchase of the stock of the latter. The true import would include not only that but also the effect on competition of the alliance with King, through

the acquisition of King's client, International. The three of them were engaged in the single line of commerce consisting of the printing and distribution of color comic supplements. The printing of color comics is the same no matter for whom it is done or through whom they are distributed. The combination of those who print and sell comic supplements with those who sell comic supplements printed by others fastens more tightly the hold of the group on the side of supplement printing business. As a result of the acquisition, King has become dependent on Greater Buffalo for most of the printing which it sells in competition with Greater Buffalo. Greater Buffalo, it is said, had no long-term contract for King's business following the acquisition. Yet it had the almost certain right to print for King, its principal selling competitor and a 10-year contract was entered into in the summer after the acquisition. There is evidence that Greater Buffalo has taken accounts from King since the acquisition. But existing competition between them is naturally restricted to sales at a price higher than Greater Buffalo charges King for printing; and it is not that fuller competition that could exist if King had an independent printing source.

King's executive officer proposed, after the stock acquisition of International, that King acquire its own color supplement printing capacity.

"Even if it cost money to do this and diminished profits, wouldn't that be better than the eventual loss of most, if not all, of our readyprint business?"

"The Syndicate which for more than a quarter of a century has been number one in the readyprint field is now at best number two, and quite helpless. Newspaper history clearly emphasizes the difficulty, in fact hopelessness of regaining a lost position.

There is plenty of current evidence to substantiate this.

"If Koessler [head of Greater Buffalo], because of what he has done the past few years, were to be attacked, in my opinion he would lose, but there is the danger, I suppose, of our becoming an accessory. Here is another reason why I think that if we were in the readyprint field with plants of our own it would restore a competitive aspect and certainly that wouldn't be discouraged in Washington."

Prior to the acquisition, King put pressure on International to construct a southern plant to meet Buffalo's proposed expansion there. Prior to the acquisition King also induced International to cut its price to meet competition and actually transferred a few contracts from International to Greater Buffalo because of prices.

Those practices ceased after the acquisition. Greater Buffalo acquired control of about 75% of independent color comic supplement printing, leaving King no reliable alternative supply. Greater Buffalo and International who had been competitors ceased to be such. The threat that newspaper customers will do their own printing is of course a factor in the competitive situation. But according to the record color comic supplement printing requires exacting mechanical techniques performed by specially trained personnel and independent printers specializing in supplement printing and handling a high volume of business can produce a high quality product more economically than most newspapers.

The test of § 7 is whether the effect of an acquisition "may be substantially to lessen competition." The concentration of 75% of the independent color comic supplement printing business in one firm points firmly to the conclusion that the difficulties of new entrants becoming real competitors of Greater Buffalo are greatly increased.

- We also disagree with the District Court that the acquisition of International by Greater Buffalo was within the "failing company" exception to § 7 of the Clayton Act.

That test is met only if two requirements are satisfied: (1) that the resources of International were "so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure. . . ." *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 302, and (2) that there was no other prospective purchaser for it. *Citizens Publishing Co. v. United States*, 394 U. S. 131, 138.

It is true that its owners wished to sell rather than raise the capital needed for modernization and expansion, and that King, its sole customer, was threatening to place some of its business elsewhere. Yet King had not threatened to invoke, nor had it invoked, the six-months' cancellation provision in the contract. Its expansion plans were being actively pursued and it continued to pay dividends to its owners. Indeed in the year of the sale it had shown a substantial increase in profits.

Moreover, only King and Greater Buffalo were considered as prospective purchasers; the numerous other smaller color comic supplement printers were never even approached.

Since the District Court found no violation of § 7, it naturally did not reach the question of remedy though it said that if there were a violation, it would not warrant "a court's exercising its discretion to order a divestiture fifteen years after the occurrence of the alleged illegal conduct." That is not the law; the passage of time *per se* is no barrier to divestiture of stock illegally acquired. *United States v. DuPont*, 353 U. S. 586, 590; 366 U. S. 316. Divestiture performs several functions, the foremost being the liquidation of the illegally acquired market power. *Schine Chain Theatres v. United States*, 334 U. S. 110, 127-129.

We do not, however, reach the question of divestiture. A majority of the Court is of the view that the nature of the decree to be fashioned should be initially considered by the District Court. In that connection two additional questions will need be passed on by the District Court.

First is the question of the consent decree entered with Hearst. As to it the District Court said: "King Features may continue to engage in the practice of combining the sale of features and printing until the court shall determine the antitrust issue as to Greater Buffalo. The decree also provided that Hearst shall obey the antitrust laws during the pendency of the action."

We do not have enough information about the consent decree and its operation and the related facts to know how it should now be integrated into a decree.

Second. In the fifties Greater Buffalo erected a printing plant at Lufkin, Texas, to improve its market in that area by saving transportation costs. There is some evidence that in 1950 Greater Buffalo made a moral commitment to certain newspapers to build a plant in the Deep South. A plant was constructed at Sylacauga, Alabama, after the acquisition of International.

There are cross-currents in the record which suggest that the Sylacauga plant was the product of International's wishes, rather than Greater Buffalo's, and that the primary motive for Greater Buffalo's acquisition of International stock was to eliminate International's planned expansion in the South as a competitive threat.

The status of the Sylacauga plant is a matter to be considered by the District Court under the controlling precedents. See, *e. g.*, *United States v. Aluminum Co. of America*, 247 F. Supp. 308, *aff'd*, 382 U. S. 12.

The judgment is reversed and the cause remanded for the drafting of a decree and the making of such additional findings both as respects the consent decree and the Sylacauga plant as may be appropriate or necessary for an effective remedy.

Reversed.